

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting of 23 January 1989

ATTENDANCE

PRESENT: S. Smith, Barlow, Birdsall, Blane, Borcherts, Brooks, Cameron, Chesler, Chudacoff, Croxton, Dandekar, Davis, Debler, DeCamp, Diana, Dobbins, Eggertsen, Foss, Floyd, Porter, Gilgenbach, Gray, Greenwood, Deniston, Haefner, Hinton, Hollingsworth, Levine, Jones, Kelsey, Kirking, Lenaghan, Levy, M. Lomax, R. Lomax, Margolis, Markey, McDonald, McLaughlin, Meyer, Meyerhoff, Moore, Morris, Mosher, Nadelman, Ness, Olson, Radine, Reed, Rosenthal, Scodel, Tentler, Turner, Warner, Friedman, Whitehouse, P. Smith, Winn, Wrobleski, Yano, Wulff, Crichton

ABSENT: Bartholomew, Alpern, Connelly, Craig, Dirks, Dressman, Goldberg, Gull, Greene, McLeod, Mignolo, Owens, Potter, Sargous, Seligman, Smouse, Strang, To

Professor Beth Reed convened the meeting at 3:15 p.m.

MINUTES

Professor Reed explained that the hard disk drive for the computer in the SACUA office had crashed, destroying the attendance record for 12 December, therefore the listing in the minutes might include some who were not present. The minutes of December 12 were approved as distributed.

MATTERS ARISING

Professor Reed thanked Mary Crichton for filling in as Senate Secretary for the January meeting.

Professor Reed apologized for the missing SACUA minutes, which also had fallen victim to the computer crash, and promised that they would be distributed with the next Senate Assembly agenda. She proposed two changes in the agenda: the omission of item 4, Faculty Questions, because of the illness of Colleen Dolan-Greene and adding a report from the Comprehensive Studies Program on Faculty Mentoring to follow discussion of the Discriminatory Harassment Policy. There was no objection. SACUA had received a faculty question about recent solicitations for M-PAC. Professor Reed said that this was not the same as the

public interest group proposed by Professor Gordon and announced that an ad hoc committee had been appointed to explore Gordon's suggestion. Discussion of M-PAC will be scheduled for the faculty question period at a subsequent Senate Assembly meeting.

Professor Reed requested approval of the following nominations by SACUA:

Government Relations Committee: Professor William Sharp to replace Professor Jerry Hudson, who has left the University, and Professor Leslie Olsen to replace Leo McNamara, who is on sabbatical.

Budget Priorities Committee: Richard Sands to replace Professor Burton E. Voss, who is on sabbatical.

University Council (2 of 3 to be appointed): Professor Jens Zorn (Physics, LSA) and Professor Janice Lindberg (Nursing).

Approval of the nominations was passed unanimously.

REDRAFT OF DISCRIMINATORY HARASSMENT POLICY FOR FACULTY AND STAFF  
IN THE UNIVERSITY ENVIRONMENT

Professor Reed explained that the flow chart for handling complaints which was distributed at the meeting was not an official part of the document. It was merely intended to facilitate visualizing the complex processes involved. She also noted that the draft was completed late at night and still needed some technical corrections. She conveyed SACUA's recommendation that the subcommittee be charged with making changes of this nature. She then introduced the members of the redrafting subcommittee who were present: Walter R. Debler (Engineering), Peggie J. Hollingsworth (Medicine and Public Health), R. Thomas Lenaghan (LSA), James A. Winn (LSA, and Institute for the Humanities), Candace Yano (Engineering), and John Schwartz (University Policy Analyst), consultant. Peter E. Smouse (Medicine), absent on a lecture tour, had approved the draft.

Professor Dobbins observed that the assignment of grades, which could be partly for reasons of socio-economic circumstances, was not addressed. Professor Reed replied that a grade could be appealed under this policy if the student felt it was based on discriminatory factors. Professor Ness pointed out that there are well-established procedures for grade appeals.

Professor McDonald raised two questions about Section D. It appeared that only the complainant, not the accused, could request more formal procedures (Professor Reed responded that this was inadvertent). With regard to D.3. on secrecy, he said he would want to try to avoid having the complainant go to the newspapers before the procedures are initiated. Professor Winn responded that we could not go beyond recommending discretion; he

did not see how, in view of the community's free speech rights, we could enjoin people not to interview with the press. Professor Lenaghan agreed and added that the procedures, if perceived to be neutral and fair, might be an incentive to use the University's procedures and not the press.

Professor Friedman objected to the phrase "or could be construed by reasonable people" in A.1.d. and A.2.d. Professor Debler explained that this was a rephrasing of "reasonably construed," which in legal language is intended to be protective but may not be so understood by lay persons. Professor Winn referred to the difficulty of determining intent and to the fact that similar language in the student document creates a need for some kind of parallel in this document. Professor Friedman objected that questions of intent arise constantly in law. He also observed that the situations of professor and student are dissimilar; the chilling effect of the disputed phrase on a professor could be much greater. Professor Scodel agreed with various discussants that the language was too vague but noted that damaging speech is not necessarily intentional. She recalled some instances from her undergraduate days where a professor in the classroom made remarks highly offensive to women, yet was probably unaware of their offensiveness. Some procedure by which the professor would have been talked to about his insensitivity would have been helpful.

Professor Ness observed that 1.d. and 2.d. might be redundant, since in both cases paragraph c deals with the same behavior. After some further discussion, Professor Winn announced that the committee was informally polled and would not object to the deletion of the disputed language. It was then moved by Professor Ness, seconded by Professor Cameron, that paragraphs 1.d. and 2.d. in II. A. be deleted. Professor Friedman, supporting the motion, said that intent could be addressed better in the context of imposing severe penalties. Professor Smith questioned the basic terminology of the document on the grounds that we all (legitimately) constantly discriminate. He suggested the inclusion of some clarifying adjective. Professor Davis raised a point of order: this was not germane to the amendment. A vote was taken on the amendment, which passed with 56 in favor, 3 opposed. Professor Winn, responding to Professor Smith, conceded that "discrimination" in its root meaning refers to drawing fine distinctions, but he emphasized that, in recent American usage, the pejorative sense has overwhelmed the earlier meaning and has also acquired legal status.

Professor Tentler, referring to section IV.D.4., said that the complainant or the accused should have the right to refer a case to the Academic Freedom Committee. Professor Reed responded that this was the intent. After a brief discussion, Professor Friedman suggested the following wording to be added to the

second sentence of this section: ". . . , or if either the complainant or the accused requests such a reference." This was accepted without a formal vote as articulating the intent of the committee.

Returning to the question of intent, Professor Meyer commented that this should not be part of the definition of harassment, but that it should be dealt with at a later stage. Professor Friedman proposed amending 7.b. to require clear and convincing evidence of intent before the most severe sanctions could be recommended. Mr. Schwartz observed that in some circumstances serious sanctions could be appropriate without intent and sanctions should be commensurate with the offense, taking into consideration both intent and the effect on the complainant. Professor Radine voiced a different concern: the possibility of purely frivolous accusations. Professor Winn pointed out that language pertaining to this issue had already been added. Of the two suggestions under discussion, he proposed the one by Mr. Schwartz. When the committee had met with complaint handlers, it had become evident that the complaints actually received were only the tip of the iceberg. The committee was concerned that the document not have a chilling effect on authentic complainants. Professor Reed noted that 7.b. pertains to the pre-trial stage; actual sanctions would be determined later. Ms. Wulff commented that faculty members might sometimes be the complainants; it was important to balance seriousness. There was discussion as to whether or not parliamentary rules permitted voting on Mr. Schwartz's suggestion. An amendment to the amendment, substituting Mr. Schwartz's words, was moved by Professor Birdsall and seconded by Ms. Borcherts with the consent of Professor Friedman, who said that the two were complementary. The motion was to insert the following in the second line of 7.b.: "The recommended sanctions shall be commensurate with the alleged conduct, taking into consideration the intent of the accused person and the effect of the alleged conduct on the complainant." The motion passed with 40 in favor.

Professor Friedman then again raised the issue of determining intent prior to recommending severe sanctions. After some discussion, Professor Ness commented that he had previously thought this safeguard was not needed, but he was reminded of the House UnAmerican Activities Committee, which started out with the laudable aim of investigating fascism and ended up doing serious damage. Professor Lenaghan suggested wording to the effect that severe sanctions be recommended only if the committee finds intent. Professor Friedman then proposed the following rewording of his original amendment, to be added to the amendment by Mr. Schwartz: ". . . , but suspension, demotion or dismissal may be recommended only if the committee finds clear and convincing evidence that the accused person acted with the intent of

creating the adverse effects specified in section II. A. of this policy. The motion passed, with 38 in favor, 15 opposed, and 1 abstention. There was then a call for the original motion as amended. The motion passed, with 56 in favor, 2 opposed, and 1 abstention.

Professor Moore proposed the deletion of the middle portion of section IV. C. on the grounds that deans, directors and supervisors have authority over such matters as promotions. They would not be able to forget that they were once involved in a discussion about an alleged harassment policy violation. Professor Winn said this was a serious change; all groups involved with the policy had assumed that procedures would begin in units. After a brief discussion, Professor Barlow pointed out that the motion had not been seconded. No seconder came forward.

Professor Lomax then introduced discussion of section II.B. on consensual sexual relationships. Professor Diana wondered about the situation where one's spouse is in the same department. Dr. Hollingsworth noted that there is already a ruling about nepotism. One is removed from decision-making if it involves a family member. Professor Tentler said that his wife, who was a graduate student in his department before their marriage, found the language problematic. Professor Whitehouse, objecting that the section reads as if consensual sexual relationships were a definition of sexual harassment, suggested "shall raise the question of" to replace "constitute." Professor Ness noted that even such relationships can be sexual harassment because of the message conveyed to other students. Professor Winn, after consulting with the committee, said that many would accept the insertion of "often constitute." Professor Dobbins so moved, seconded by Professor Blane. Professor Whitehouse moved the substitution of "create a potential for," seconded by Professor Meyer. Professor Winn objected that this would discourage victims from complaining. After considerable discussion of the pros and cons of these proposals, Professor Ness noted that the intent was to make clear that even consensual relationships can constitute harassment.

Professor Birdsall proposed a friendly amendment to the Dobbins motion, making it read: "even consensual sexual relationships often constitute sexual harassment." Professor Dobbins agreed to this, and called the question. The motion carried.

Professor Dobbins then called the question on the motion as amended. Professor Croxton said that debate should not be cut off. Professor Olson, acting as parliamentarian, said that a two-thirds vote would be needed to cut off debate. A vote to call the question passed with 28 in favor, 19 opposed, 3 abstaining. Given the lateness of the hour, Professor Rosenthal asked if we could have a quick indication of other potential

amendments. Professor Tentler said he wanted to strengthen the section on sexual harassment by including a statement on the magnitude of the problem. Professor Friedman wished to propose inserting "apparently consensual." A question was raised as to whether this policy also covered faculty relationships with secretaries. Although it is not illegal to date one's secretary, Mr. Schwartz cited recent case law in which companies have been held liable in such cases. Professor Debler, referring to the Bendix case, said that the University has an obligation to prescribe rules that would work to discourage such situations even if they are not strictly illegal. The wording in the document is "should (not 'must') avoid." Professor Winn said that the insertion of "apparently" would not be a problem. The question was called on the wording, "even apparently consensual relationships often constitute sexual harassment." The motion passed. A vote was then called on accepting the entire document as amended. The motion passed unanimously.

Hearing no objection, Professor Reed postponed the remainder of the agenda until a later meeting. A motion to adjourn was entertained. The members "voted with their feet" and the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Mary C. Crichton  
Senate Secretary, pro tem