

The minutes of the February 1, 1993 Senate Assembly meeting were approved on February 15, 1993.

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

MINUTES OF FEBRUARY 1, 1993

ATTENDANCE

Present: Aisen, Anderson, Angus, Beam, Birge, Blair, Blinder, Brewer, M. Brown, Brusati, Cameron, Chiego, Cole, Cowan, Coward, D'Alecy, DeCamp, Didier, Douthit, Eklund, Ensminger, Fellin, Frey, Griffin, Gross, Gull, Irani, E. Jensen, Kaplan, Katehi, Kaviyany, Kelley, Kunkel, Larson, Lawson, Lynch-Sauer, Marcelo, Margolis, Mosher, Mukasa, Olson, Penchansky, Saunders, Schwank, Shirley, C. Smith, R. Smith, Thum, Tremper, Warner, Watkins, Whitehouse, W.J. Yang, V. Yang; MacAdam, Stillman, Thorson.

Absent: Billi, Bord, Cox, Crandall, Danley, Gazda, Gidley, Greene, Hayashi, A. Jensen, Kabamba, Koopmann, Kramer, Lopez, Montalvo, Organski, Razzoog, Scheppele, Semetko, Silverstein, Stein, Stensones, Sutton, Tinkle, Tosney, Wheeler.

MINUTES

The minutes of the December 14, 1992 Assembly meeting was corrected and approved.

ANNOUNCEMENTS

Jensen announced that Rashid Bashshur, Chair of the Committee for a Multicultural University, will be addressing Senate Assembly on "The Quality of Life for International Students at the University of Michigan" at the next meeting on February 15.

He also noted that on February 18 the University Senate meeting will be at 4:00 in the Rackham Amphitheatre followed by the third annual Davis-Markert-Nickerson Lecture on Academic and Intellectual Freedom. Catharine Stimpson, University Professor at Rutgers University, will give the address entitled "Dirty Minds, Dirty Bodies, Clean Speech."

Jensen reported that an orientation session for the faculty ombuds had been held, and that the nominating committee was at work on the slate of SACUA members.

REPORT OF THE FACULTY COMMUNICATION COMMITTEE

Didier reported on the review undertaken by the Faculty Communication Committee (document distributed) and outlined the recommendation of the committee. They proposed a six- to eight-month trial period for a faculty perspectives page be included monthly in the University Record; an editorial advisory board will solicit submissions and will be responsible for the content of the page.

It was moved and seconded that the recommendations of the committee be implemented.

Brewer spoke in favor of the resolution.

Shirley asked what would happen in terms of funding after six months. Didier responded that this would have to be reviewed.

The motion passed unanimously.

DISCUSSION OF THE FACULTY HARASSMENT POLICY (Document previously distributed)

Jensen reviewed the issues and history of the policy's development, outlining the relationship to the origin and development of the policy on sexual harassment. He clarified the status of the interim policy, developed and put in place in 1987 and modified last summer in response to recent court cases. Jensen also noted the relation of the policy to value statements in place at the University; he called attention to the memo of January 20, 1993 outlining the pros and cons for such a policy, suggesting that they might serve as a basis for discussion.

R. Smith voiced concerns that the definition of prohibited action or speech was written so broadly that the policy invited selective enforcement. He questioned whether it could be interpreted to prohibit fellowships targeted to minority members.

Cowan asked if cases had been brought forward under this policy and whether there had been an opportunity or structure, comparable to Senate Assembly for faculty, for staff to give the policy broad consideration and provide feedback. Elsa Cole, University Counsel, responded that the policy applies to both faculty and staff; she knew of cases involving staff members but was unsure about faculty.

Ensminger outlined the response he had received from the Medical School faculty, emphasizing that violation of this policy should be met with education rather than disciplinary action, that the policy should apply to physical rather than verbal actions and that the policy should apply to outcome, rather than purpose or intent.

Aisen concurred with previous points, noting that it is often impossible to judge the effects of comments. He addressed a question to the General Counsel asking if the policy were constitutional. E. Cole replied that the current language had been drafted based on the court's objection to an earlier student policy and that she believed it was constitutional.

D'Alecy questioned whether this was a policy or merely a proposed policy. Jensen replied that it was a policy currently in place, and E. Cole concurred. Whitaker added that the interim policy was drafted by a faculty committee although it did not come through SACUA or Senate Assembly.

Anderson spoke against the policy as it was written, noting that the final clause appeared extremely vague and would inhibit necessary open discussion of controversial topics. She suggested a distinction between remarks made in the spirit of enquiry and those intended to intimidate or denigrate. She also noted that faculty were and should be subjected to a higher standard of truth than the general population.

Beam expressed a view from librarians on campus that this policy unnecessarily restricted free expression and she suggested alternatives to a code of speech.

Arthur Oleinick from Public Health questioned whether it is possible to implement such a policy fairly in a constitutional fashion. He also noted that the policy was biased against the individual against whom the complaint was made, especially in protecting confidentiality of the complainant, and that it also involved violation of due process.

Kelly concurred with many comments but argued for a strong policy of some sort, reminding the Assembly that the policy didn't come forward in a vacuum but rather in response to a very real set of problems, in particular sexual and racial harassment. He suggested a faculty committee to work on the difficult task of distinguishing denigrating speech from open discourse.

Cowan asked for an example of provision B ("is used as a basis for a decision that adversely affects an individual's education, employment, housing or participation in a University activity"). E. Cole was unable to provide immediate examples but noted that the specific provisions had been crafted based on recent court decisions.

Penchansky suggested establishing a committee to work with the General Counsel to draft an acceptable policy.

Shirley expressed support for a continued study of such a policy to foster an atmosphere of respect for the rights of others so that all may learn. He questioned to what extent a constitutionally acceptable policy could really chill free speech but rather might contribute to an environment that guides and educates rather than intimidates.

J. Cole spoke in favor of the policy, suggesting that unease might come from a lack of knowledge on how the policy might be implemented.

Cowan again questioned the intent of provision B. Anderson suggested an example in which a student was eliminated from fellowship consideration.

Schwank noted that the policy could be used by non-minority students to bring complaints based on affirmative action fellowship or scholarship decisions. He also suggested that, because of the vagueness, minority students could bring complaints about grades.

Kelly challenged both examples, expressing the opinion that the policy did not cover these cases.

Whitehouse noted that there was no introductory positive statement on what the University hoped to do and could do in fostering an environment of non-discrimination and educating the community. Jensen noted the document "Fundamental Tenets of Membership in the University Community," and pointed out that a portion of it was used in a draft introduction to the policy mailed out to Senate Assembly members earlier in the year.

Cameron shared a law review quotation that recommended an open discussion in a civilized manner.

Brown commented that the process proposed was indeed punitive and that the policy would inhibit debate and restrict faculty and staff rights.

Gross spoke for the need of some type of policy but expressed reservations about the current policy because of its vagueness. He reported that some of his colleagues felt it was unconstitutional as written.

Whitaker outlined the procedure for the policy development and implementation, noting the complexity of defining harassment and the importance of developing an internal method of resolution of such cases when they occurred.

Gross reiterated that the language had its origin in Equal Employment Opportunity Commission (EEOC) policies used in employment rather than education.

Aisen summarized the prevailing views: 1) accept the policy as is; 2) have no policy at all; and 3) develop a modified policy.

Jensen suggested that having no policy was not an option, but that Assembly could make recommendations on modifications and identify a mechanism to make such recommendations. Penschansky suggested that a subcommittee of Senate Assembly could write such a policy. Whitaker responded that the interim policy was currently in place and the idea would be to work together to come up with a policy that resolved concerns. He expressed agreement with the point that the policy had come not from an educational perspective, but from EEOC policies.

Kaplan noted that the AAUP view is contrary to the policy as currently written.

Cowan suggested that the faculty policy should be separated from that for staff.

Jensen asked members to vote for one of three options: 1) accept the policy as is; 2) have no policy; or 3) work on revising the current policy.

The Assembly approved the motion to work on revising the current policy and approved Jensen's suggestion that SACUA be responsible for convening a small drafting committee.

ADJOURNMENT

The meeting was adjourned at 5:00 p.m.

Respectfully submitted,

Barbara MacAdam
Senate Secretary, pro tempore

a/m/feb193