

THE UNIVERSITY OF MICHIGAN
SENATE ASSEMBLY

Minutes of Meeting, February 20, 1978

ATTENDANCE Present: Members Angus, Aupperle, Barnett, Bornstein, P. Jones, D. Brown, M. Brown, R. Browne, Butler, Caldwell, Uttal, Christensen, B. Cohen, Cooper, Corpron, Crichton, Dingle, A. Edwards, Elving, Fowler, Gay, Gordon, Gray, Heers, Gedney, Hildebrandt, Hungerman, L. Jones, Juvinal, Kaplan, Leary, Lindberg, Livermore, Merte, Millard, Morley, Naylor, Porter, Portman, Rabkin, Romani, Schanck, Shannon, Wight, Simonds, Sinsheimer, Tonsor, Votaw, West, White, Schulze, Lehmann

Absent: Members P. Cohen, Coon, Saxonhouse, Whitmore, O. Edwards, Fekety, Gelehrter, J. Harris, R. Harris, Kish, Penner, Proctor, Stross, Tilly, Trojan, Winans, Zorn

Guests: Gwendolyn Baker, Director, Affirmative Action Program; Professor Bruce Friedman, Chairman, Civil Liberties Board

CALL TO ORDER The meeting was called to order at 3:15 p.m.

MINUTES The minutes of January 16, 1978 were approved with minor corrections.

COMMENTS ON SACUA MINUTES Professor Naylor asked for a progress report on the resolution supporting tuition grants for GSRA's. He thought that if no progress has been made, SACUA should take up the issue with the President. Lehmann responded by reporting the efforts of Chairman Haddad, of Research Policies, and the support of Vice-President Overberger. Because it bears on the Rackham fee structure, it is being considered by Vice-President Shapiro. L. Jones reported that the subject is on the agenda of Research Policies for February.

Professor B. Cohen asked when the final draft of the Faculty Handbook will appear. The answer is that distribution is planned for the fall.

Professor Elving asked why the faculty directory was distributed so late. Professor Aupperle pointed out that it is an expensive, fully finished, slick publication, especially when compared with those on other campuses. Professor Uttal asked why advertising is allowed.

ANNOUNCEMENTS There were no announcements.

NOMINATIONS & APPOINTMENTS The Assembly approved the appointment of Sallie Churchill, Professor of Social Work, as a temporary replacement on the Board of Directors of the Michigan Union, and the appointment of Edna Laughrey, Librarian, to the Board of Directors of the University Cellar.

FUNDING PROBLEMS OF THE LIBRARY--
MARGARET LEARY

Margaret Leary, Assistant Director of the Law Library and member of SACUA, began by sketching the problems that led to the Assembly resolution on the book budget last fall. Is the library funding for books adequate? Is it wise to rely heavily on year-end money to fund the book budget? Why did the crisis occur?

She then summarized the activities of SACUA over the year and the Assembly report delivered by Dr. Wagman, Director of the Library. She reviewed the report of library funding prepared by the Office of Academic Planning and Analysis, and recent discussions in the Budget Priorities Committee. All the information that has been gathered supports the conclusion that the position of the library has been damaged and continues to slip. Although a program revision request submitted last fall was ignored by the Governor, library funding remains in the first position among the University's internal priorities. The Executive Officers have given first place to a \$400,000 increase in the book budget for next year, an amount to be repeated for a total of three years. The projected increases will establish a level of funding roughly equal to that of peer libraries--Indiana, Illinois, Wisconsin, Berkeley, UCLA, and Cornell.

She then reviewed SACUA's resolution for a proposed revision of the University Library Council. The purpose of the resolution is to improve communication between the library administration and the faculty, and to impress on both groups a sense of mutual responsibility.

The resolution was presented to the Assembly for action.

Professor Juvinal asked why wording that restricted reappointment to the Library Council had been eliminated. Lehmann acknowledged the change and thought it an improvement.

Professor Lindberg asked if the Director of Libraries would no longer be the chairman of the Council. Lehmann responded affirmatively.

Professor Uttal objected that the wording disenfranchises primary researchers by making schools and colleges the exclusive source of recommendations of those to serve on the Council. Mrs. Downs explained that in the election of Senate Assembly representation, Research Scientists who are not administratively attached to a school or college have the option of voting with the school/college of their choice. She pointed out that SACUA might remind the deans and executive committees of this special pool when requests for nominations to University Council are being made.

Professor Romani asked if the Library Council had jurisdiction over the libraries at Dearborn and Flint, and whether or not the Director had carte blanche in making the two appointments he is permitted. Lehmann answered that the Dearborn and Flint libraries are separate, and there are no restrictions on which faculty members the Director might appoint.

The resolution (to be forwarded to the Board of Regents as a recommended change in the Bylaws) was approved unanimously.

RESUME OF THE
SYMPOSIUM ON
THE NEW COPY-
RIGHT LAW--
MARGARET LEARY

Ms. Leary began by acknowledging the difficulty of summarizing a four-hour session consisting mostly of question and answer--especially when the topic, the copy-right law, is itself so complex. The lawyers who conducted the symposium defined the central issue as the conflict between the rights of the copyright holder, whom the new law protects, and the rights of the public to free expression in the form of the copying of published work. Teachers and librarians are in the middle: duty-bound on the one hand to make ideas accessible, and on the other to defend the law governing publications.

The general pattern of the law is that it reserves to copyright holders exclusive rights in their works, including the right to make copies. The copying of works will require the permission of the holder, except where the copying is specifically allowed by the statute. The two major forms of copying allowed are described as either "fair use" or "library copying." "Fair use" is described in Section 107 and "library copying" in Section 108. Guidelines have been issued to cover "fair use."

"Fair use" for faculty seems to boil down to the allowance of a single copy for the teacher for purposes of research or teaching of, for example, a chapter from a book or an article from a periodical. Multiple copies for classroom use--i.e., one per pupil per course--may be made only if the copying (1) is short and spontaneous, (2) will not depress the market for the original, and (3) contains a copyright notice. Spontaneous means that there has not been time to obtain permission, but this would not permit copying the same work from term to term. Short means no more than 2500 words.

"Library copying" is subject to contractual limits, which may be imposed at the time of the original purchase of the material. There is no particular provision in the law for multiple copies in library reserve. Conservative legal advice has been that only a single copy of a protected work be placed on reserve unless we are willing to pay royalties for permission to copy.

The lawyers' basic advice was not to copy if the purpose of the copying is to avoid buying. The question and answer period revealed the need for an overall University policy covering such issues as: the definition of a copy center employee, the liability of copy machine operators, and the authority of such operators to refuse service to faculty.

Ms. Leary concluded that the University is faced with a fundamental question about its objectives. If our priority is the avoidance of suits, serious disruption of library services and faculty habits will occur. If our priority is to protect the dissemination of information, we must strongly encourage a liberal interpretation of the new copyright law.

She then called for questions.

Professor Crichton asked about the copying of out-of-print books. Leary replied that such copying is allowed.

Professor Barnett asked if the University had established channels for obtaining permission to copy. Leary answered, no.

Professor Friedman asked about the cost of permission. There was no definitive answer. Lehmann suggested there might be a standard release form. Professor Gray of Public Health said that in his field the cost of permission for copying is being indicated in the original publications.

Professor Bornstein suggested that perhaps the library should employ an expert who might advise all concerned.

Professor White asked what attitude have librarians taken towards the new restrictions. Leary replied that the University Library has a policy against making multiple copies. She added that perhaps the University should advocate its own need to facilitate teaching and research.

Professor Tonsor wondered who would police the law. Leary thought the size and prestige of Michigan makes it a likely place for publishers to send inspectors. Professor Votaw wondered about the policing of unsupervised copying machines. Leary answered that notices of liability will be posted at all machines.

Professor Bornstein suggested that SACUA vigorously advocate faculty needs within the councils of the University.

Professor Romani returned to the questions of liability and fair use, asking for clarification. Professor Porter responded that copy centers will never be held liable for copyright violations. He added that the whole question of the University's policy on the matter needs further thought and a lot of discussion. The publishers' rights and interests are far from negligible.

Professor R. Browne asked if there would be any licensing of copying, but nobody seemed to know.

Professor Lehmann thanked Ms. Leary for her reports.

REPORT ON RE-
CENT AGREEMENT
OF CONCILIA-
TION WITH THE
HEW OFFICE OF
CIVIL RIGHTS--
GWENDOLYN
BAKER

Professor Gwendolyn Baker, Director, Affirmative Action Program, began by describing the December visit of OCR officials to campus to conduct a Pre-Audit Review. The resulting letter of more than 30 pages listing deficiencies in our Affirmative Action Program was not unexpected. The deficiencies listed were almost entirely in matters of procedure--the ways in which we keep and organize data. Five areas were specified: 1) statistical analysis, 2) salaries, 3) promotion and tenure, 4) termination, and 5) monitoring of the Affirmative Action Program. The January negotiations that led to the agreement of conciliation were essentially concerned with timetables for meeting requirements. We bargained for time so that our compliance would be effective. We expect to be fully in compliance by December 31 of this year.

Professor Baker explained that the University did not file a work-force array with the 1976-1980 utilization analysis. These statistics and analyses are the basic tools of the HEW Office of Civil Rights in determining the extent of an affirmative action program. They also need to have figures, i.e., goals and projections and explanations of how we arrive at our figures. We also will need to be able to describe who is applying for positions because our goals, as well as our performance, are related to the pool of those available. Hence we will ask applicants to identify their race and sex.

Professor Baker then outlined some of the immediate tasks of the Affirmative Action Program. There will be a review of those denied promotion and tenure. If it is clear, only after extensive analysis, that discrimination is occurring, recommendations to correct the abuse will be sent to the Regents. There will be an analysis of salaries. When equity has been determined, recommendations will be made, and should affect more people than just women and minorities. Current data on terminations include only the supervisor's reasons for non-renewal. The employee's reasons are not recorded. Exit interviews may be suggested as a means for correcting this imbalance. More effective monitoring of the program will require a re-structuring of the way we keep data. The University has historically been decentralized, but monitoring of affirmative action will require some centralization. She suggested that the change could be helpful, and would not call for a great deal of extra time and effort. On the whole she thought that compliance with the agreement of conciliation would lead to a better system of search procedures for job candidates. The program would supply beneficial support for the efforts being made in the schools and colleges.

Professor Baker concluded by pointing out that the review by the Office of Civil Rights is only one of a series of reviews we could receive this year. We could have reviews of our compliance with regulations concerning the handicapped, Title IX, Title VII, and Title VI.

She then called for questions.

Professor Elving asked how such factors as teaching ability and research will be included in the analysis. Professor Baker replied that only non-subjective data will be included in the report. Elving asked about the practice in his department of writing letters for terminated faculty that make no mention of dismissal. Could these letters be used as evidence that the reasons for dismissal were doubtful or negligible? Professor Baker replied that many former practices in hiring, etc., will have to change.

Professor White asked how affirmative action goals are established. Professor Baker answered that we set up our own models. White then asked who are considered minorities. Professor Baker recited the federal definition: Black, Native-Americans, Mexican-Americans, and Asians.

Professor Uttal called attention to what he took to be the theme of the day's meeting: those principles, values and attitudes that make the University special.

Professor Livermore asked about the use of the statistics that have been requested. He asked Professor Baker to attempt to characterize the OCR position in terms of a spectrum of possibilities. He described three points along such a spectrum: 1) to assure equal opportunity; 2) to advance the interests of minorities above those of other candidates; 3) to seek a proportional effect by making sure all groups are represented in a specific work force. Professor Baker said that she could not bring the OCR in line with these positions. The OCR, she said, is using whatever tools they have to make sure affirmative action is taking place.

Professor L. Jones asked about the cost, explicit and implicit, of compliance. He was sure it is tremendous, and sees no evidence that the federal or state governments will share it. Professor Baker could give no figure. She was convinced, however, that the human cost has been greater. She did not think the dollar cost would be excessive. Professor Bornstein reiterated the importance of knowing the cost in dollars, but Professor Baker said she could give no estimate.

Professor Rabkin offered an analysis of the way the unwise application of statistical measures to comply with affirmative action guidelines could result in serious human

cost to the individuals who were ostensibly being helped. If individuals are hired primarily to meet statistical goals, their chances of success at the University, under current standards for promotion and tenure, will not be good. If statistics are applied again down the line to govern tenure, then the nature and mission of the University will be changed. He wanted, therefore, to know how considerations of quality of performance as teacher and researcher could be built into the analysis.

Professor Baker answered that the idea of affirmative action is to apply the same criteria, the same objectivity to all candidates. She did not think the quality of the University would be affected.

Professor Lehmann thanked Professor Baker for her remarks, noting her willingness to return to the Assembly in the future to discuss some of the knotty problems there had not been time to discuss fully today.

GUIDELINES FOR
STUDENT EVALU-
ATIONS OF
COURSES AND
FACULTY--
BRUCE
FRIEDMAN

The Guidelines were circulated to the Assembly before the meeting. Professor Friedman explained that the focus of the guidelines was philosophical--concerned not with evaluations as such, but with the rights of faculty when they and their courses are evaluated. He then summarized certain major points and called for discussion.

Professor Rabkin pointed to the apparent presumption of the document that all courses will be evaluated. He thought that such blanket evaluation every term may be inefficient.

Professor Tonsor asked how the distinction is to be made between unfavorable teaching evaluations and evaluations that result from the espousal of unpopular views. Professor Friedman answered that the Board sought to prevent evaluations from becoming popularity contests by providing for faculty participation in developing the instrument of evaluation and for faculty selection of items to be evaluated.

Professor Hildebrandt said that he accepted the document philosophically but found it too prescriptive, almost an implementation of a program. He noted that the guidelines protect us from students but not from administrators. Professor Friedman responded that any prescriptiveness in the document is there as a response to existing programs of evaluation, and as an attempt to deal with their worst abuses. He added that any program of implementation of student evaluations will come before the Assembly.

Professor Merte pointed out that in the College of Engineering they collect both quantified data and narrative comments. The narratives go directly to the faculty member and are often helpful. He would like to see that practice preserved. Professor Friedman said the guidelines try to

retain that use of narratives.

Professor Simonds said that the issue of student evaluations requires a much larger response and more faculty opinion than we are likely to net here. He, for one, wondered if evaluations collected systematically ever prove helpful. Professor Friedman answered that the guidelines do not authorize the collection of data.

Professor Kaplan moved that all but the first sentence of paragraph #5 be deleted. The sense of the motion was to give faculty members the simple option of not participating in student evaluations. Professor Livermore seconded the motion, and asked if the Civil Liberties Board's listing of a variety of options in paragraph #5 had been deliberate and he received an affirmative answer.

Professor M. Brown argued against the motion. He thought the document offers significant protections, and that the Assembly would not improve it by tinkering.

Professor L. Jones declared that he thought the whole document too prescriptive, and that it confused the issue of faculty rights with the issue of the desirability of evaluations. He thought that schemes of evaluation should be left to the individual units.

Professor Hildebrandt moved postponement of further consideration of the document, including the proposed amendment, to the March meeting. His motion passed.

ADJOURNMENT

The Assembly adjourned at 5:20 p.m.

Earl J. Schulze
Senate Secretary

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