

Minutes of 17 April 2000
Approved 23 October 2000

**THE UNIVERSITY OF MICHIGAN
SENATE ASSEMBLY MEETING**

MINUTES OF 17 APRIL 2000

ATTENDANCE

Present: Alcock, Birdsall, Bonner, Castle, Christiansen, Deskins, Dunkle, Gobetti, Juster, Karr, Karnopp, Kleinsmith, Kossoudji, Lawson, MacAdam, Marcelo, Marshall, Masson, Merchant, Navvab, Penner-Hahn, Raisler, Robertson, Rocchini, Rosenthal, Savage, Scheiman, Schneider, Taylor, Teasley, Ward, Whitehouse Jr. Alternates: Stan Berent - Medicine

Absent: Anderson, Andrews, Antonucci, Bartlett, Bernal, Boyd, Brophy, Brusati, Burns, Colletti, Dick, Erickson, Feldman, Foss, Guthrie, Harrington, Hart, Jacobsen, Jamerson, Kabamba, Kalisch, Karni, Konigsberg, Lubeck, Malamud, Malkawi, Mann, Mateo, Moseley, Murphy, Perfecto, Rahme, Rosenberg, Schteingart, Sears, Sedman, Sheil, Taghaboni, Trumpey, Uribe, Vicinus, Walker, Winger, Wingrove, Wright, Zorn

MATERIALS DISTRIBUTED

1. Senate Assembly agenda
2. Draft minutes of the Senate Assembly meeting of 20 March 2000
3. Approved minutes of the Senate Assembly meeting of 21 February 2000
4. UM Course Tools Overview

Chair Kossoudji convened the meeting at 3:11 P.M. The proposed agenda was approved.

CONSIDERATION OF THE MINUTES OF 20 MARCH 2000

The minutes of 20 March 2000 were approved as submitted.

ANNOUNCEMENTS

Chair Kossoudji made the following announcements:

1. The committee charged with reviewing university investments in tobacco companies has called for divestment by unanimous vote, concluding an effort originally spearheaded by Professor Bunyan Bryant.
2. SACUA and the Senate staff have remodeled the faculty governance website in an effort to increase faculty involvement in governance issues. Presently the website entertains between 5,000 and 13,000 “hits” per month.
3. Intellectual property issues as well as electronic privacy remain an ongoing challenge, and will require continual scrutiny.
4. Thanks to efforts by Professor Kleinsmith, outgoing associate chair of the Senate Assembly and SACUA, the unfair practice of charging faculty for imputed income for life insurance has been exposed, and the executive officers are poised to make a decision to discontinue the practice.
5. Results of a poll of the faculty regarding parking issues, based on 450 responses, demonstrate that 77 percent approve the use of more tickets and fines to discourage parking offenders.
6. Professor Jackie Lawson will assume the duties of Chair of SACUA and Senate Assembly on 1 May 2000.

VISIT OF BARBARA O’KEEFE

Chair Kossoudji introduced the guest at 3:15 P.M. Ms. O’Keefe called attention to distributed item 4. She explained that Course Tools has been developed in support of a major learning technology initiative on campus. She said the objectives were to use the worldwide web to communicate with students and to introduce students to technology in teaching. She reviewed with the audience the operation of Course Tools software, and then invited questions.

One member of the Assembly asked O’Keefe to comment about the ownership of Course Tools. O’Keefe replied that the software currently belongs to the University of Michigan and to the Media Union. She added that the administration was having discussions with vendors and might strike up a commercial venture with the material in the future. Another Senate member asked about the ownership of course content posted with Course Tools. O’Keefe responded that the question is being hotly debated everywhere. She said it was a gray area and that in her opinion the Senate Assembly should become involved in the debate.

Professor Smith remarked that his course material is marked with his own copyright. O’Keefe said that Course Tools presently lists the copyright as belonging to the originator, but that the practice may not continue. She said that the provost has appointed a committee to make recommendations on the matter.

Professor Navvab asked who has access for modification of content. O'Keefe said that the course instructor had access rights, but could grant them to others. Another Assembly member asked how to handle the use of copyrighted material from other sources. O'Keefe replied that Professor James Hilton is developing a set of guidelines for fair use; for other uses, copyright clearance would be required.

The guest concluded her presentation at 3:50 P.M.

PANEL DISCUSSION

Chair Kossoudji introduced a panel of three speakers, Professor Emeritus W. Kaplan, Professor R. Megginson, and Professor D. Velleman, who had been invited to offer remarks about issues stemming from recent student activism on the campus. Each speaker delivered initial, prepared remarks that are reproduced or referenced in an appendix to these minutes.

Presentations by the speakers concluded at 4:22 P.M., at which point Chair Kossoudji invited comments from the audience. Kossoudji remarked that one point missing from the preceding presentations was any analysis of the strength of the relationship between the secret society and the university. She suggested that everyone in the institution who did not express disapproval became accomplices in creation of a hostile environment. An Assembly member from the School of Nursing stated that in her view, the issue seemed focused on the use of a specific university room, and not on the question of free speech. Professor Kaplan responded that if the Michigamua group had been using the room for discussions about mathematics, he suspects there would have been no objections expressed. Professor Megginson rejoined that it seems there is implied endorsement of Michigamua programs by the university administration.

Professor Gobetti pointed out that the U-M spends about \$35,000 per year in support of the Multicultural House, which could be interpreted as institutional support for segregation. Professor Kleinsmith remarked that he had attended three hours of discussion at a public forum that contained little overlap with the present discussion. He said that he was concerned that the faculty viewpoint was not heard at the public forum, and that the absence of faculty input was a serious procedural problem. Professor Velleman responded that it was more than a procedural problem. He pointed out that the university president has handed this important faculty issue to a hand-picked, un-elected panel and the president has declared that only he and his executive officers will make a decision based on that narrow input.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

Spontaneous gestures of approbation for Professor Kossoudji, retiring Chair of the Assembly, were expressed from the audience.

The meeting adjourned at 4:35 P.M.

Respectfully submitted,

John T. Lehman

Senate Secretary

Appendix to the Minutes of Senate Assembly, 17 April 2000

SOME THOUGHTS ABOUT ISSUES RAISED BY THE MICHIGAMUA CONTROVERSY

Remarks by Wilfred Kaplan at Senate Assembly April 17, 2000

I approach the matter from the point of view of AAUP, to which I have devoted much effort for the past 35 years. A significant part of that effort has been advising faculty members having grievances, and frequently the grievances have related to discrimination and harassment, so that that is a familiar problem for AAUP.

After reading the reports in the University Record about the Michigamua episode, I have concluded that the main issue is one of free speech. (I am aware that some have found the main issue to be the assignment of a meeting room to the society; I find that to be a technical question in need of study, but am sure that the question would be of very little interest if the group using the room were, say, a mathematics club.)

In this case, various customs of Michigamua over the years have conveyed a message of ridicule of customs of another group and we are confronted with the question of how to respond to the distress caused by the customs.

My judgment about the issue is reinforced by an e-mail with Robert O'Neil, Professor of Constitutional Law at the University of Virginia. For many years he chaired AAUP's Committee A on Academic Freedom and tenure. He was the first speaker in Senate Assembly's series of lectures on Academic and Intellectual Freedom. He is the author of a recent book: "Free Speech in the College Community", from which I shall quote.

Two weeks ago I sent him an e-mail, telling of the present issue and reproducing the statement of the faculty group which appeared in the Record. In particular, I stated:

"I am finding that the students and faculty are really asking for revival of the speech code, about which you comment extensively in your book. "

In his reply, he wrote:

"Thanks so much for sharing this issue and the letter with me. Clearly the speech code issue never quite dies, even though it may surface in rather different forms."

I was a member of Senate Assembly in the 1980's when the University was developing its speech code. The discussion was very difficult. Complaints had been made of harassment on account of race and the faculty was strongly motivated to support efforts to counteract it. Eventually the code was adopted by the Regents. I quote from it:

"After a thorough review of the issue, The University of Michigan has determined that it needs to intervene in speech when a student intentionally uses racial, ethnocentric or sexual invectives, epithets, slurs or utterances directly to attack or injure another individual rather than express or discuss an idea ideology or philosophy. Such attacks go beyond the boundaries of protected free speech. In those instances, the University must protect the educational environment of the University."

The code had strong penalties, also safeguards against abuses. It reflected painstaking efforts to avoid conflict with constitutional guarantees of free speech.

If that code were in effect today, it would surely be cited by those who have been criticizing Michigan and the University would be carefully investigating whether a violation had occurred.

It is my impression that precisely such action is what is being requested by the protesters.

However, the speech code was found to be unconstitutional in 1989 because, despite the efforts to be within the law, it had violated the First Amendment of the Constitution.

And that is our dilemma now. We want to curb actions of one student society which convey discriminatory attitudes to another group of persons. To me, all these actions come under speech, even though the spoken word is only part of what is deemed offensive. The actions certainly do not include direct physical assaults or other nonvocal attempts to create physical discomfort for the offended group.

The problem has been widely discussed and speech codes like the one adopted here have been created at a number of universities. However, like ours, all have been abandoned under actual or threatened court action. Their fate is considered in detail in O'Neil's book. On page 12 he writes:

"The task of definition is inherently and inescapably difficult." "Even the best of legal minds have been humbled by a drafting assignment which, in fact, many universities did entrust to their ablest scholars of constitutional law. Moreover, some institutions seem to have abandoned their quest for certainty in part because key terms such as 'harassment' lacked sufficient consensus or common understanding."

and on page 15:

"Thus the guiding principle for virtually all institutions of higher learning is that free speech must be protected, even when the speech for which freedom is sought may be offensive or disruptive or at variance with the campus mission."

The 1995 edition of AAUP's "Red Book" of policy statements contains one "On Freedom of Expression and Campus Speech Codes" (pp. 37- 38). I quote from it:

"In response to verbal assaults and use of hateful language some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic or ethnically demeaning speech, along with conduct or behavior that harasses. Several reasons are offered in support of

banning such expression. Individuals and groups that have been victims of such expression feel an understandable outrage. They claim that the academic progress of minority and majority alike may suffer if fears, tensions, and conflicts spawned by slurs and insults create an environment inimical to learning."

"These arguments, grounded in the need to foster an atmosphere respectful of and welcome to all persons, strike a deeply responsive

chord in the academy. But, while we can acknowledge both the weight of these concerns and the thoughtfulness of those persuaded of the need for regulation, rules that ban or punish speech based upon its content cannot be justified. An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas--and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disserves its academic mission."

This statement and the book of O'Neil go on to consider how an institution can respond to the incidents of harassment if speech codes are ruled out. In particular, the Red Book statement goes on to propose recommended courses of action, which I summarize (I have the whole statement in a computer file and can send it to anyone who requests it.):

Adopt a range of measures that penalize conduct and behavior, rather than speech, such as rules against defacing property, disruption of

campus activities. O'Neil (on page 24) mentions threatening phone calls to a minority student's dormitory room .

Use education, in particular, through courses, to promote tolerance

and discourage offensive conduct.

The faculty, administration at all levels and the governing board should actively oppose harassment and set examples of tolerant behavior.

From what I know of the Michigamua story, essentially all involved recognize that the ancient customs of that society were offensive to some other groups and that a change in these customs was much to be desired. It is my impression that Michigamua accepts this and that their actions will eliminate the distress caused in the past. In other words, it appears that a form of education has occurred. However, I regret that disruption was used to achieve that education and hope very much that it can be avoided in the future. The best way to discourage it is for all of us to display strong and continual support for the attitudes endorsed in the AAUP statement: no harassment, no discrimination, only tolerance.

TEXT OF REMARKS, 17 APRIL 2000

Robert E. Megginson, Associate Professor of Mathematics

The issue about the tension that arises between our desire to create and preserve a comfortable campus climate for all, while still honoring our dedication to academic freedom and Constitutionally-guaranteed freedoms of expression, is certainly a difficult one, but I do not believe that the principles are at all incompatible. I have a point to make about that which I believe requires some examples. I am going to give three.

I understand fully that this discussion today is about some large issues, not directly about the recent incidents surrounding Michigamua, so I wish to point out immediately that although Michigamua is mentioned in the headline of the article that is my first example, my point really has nothing to do with Michigamua, but only with this article. This example is the main headline article from the March, 2000 edition of *The Michigan Every Three Weekly*, a free publication of the University Activities Center dedicated to satire that is distributed in racks all over campus. The title is "Michigamua Office To Be Converted Into 'Big Chief Win-Um' Casino." In the course of this article, the authors parody both of the standard movie stereotypes of American Indian speech, the pidgin and the poetic. The headline itself illustrates the pidgin version, with "Big Chief Win-Um" in it, and there are other examples in the article. The poetic is illustrated by this quote attributed to Joe Reilly, a Native American student and spokesperson for the SCC students who were involved in the recent sit-in in the Michigan Union tower: "I remember when casinos dotted the land like buffalo. That was before the white man came with his thundersticks, firewater, and devious autistic-brother-card-counting schemes. Big Win-Um hearkens back to a time when Native Americans were a happy-go-lucky folk." The article also quotes fictitious people with such made-up Indian names as Maureen Does-Laundry-on-Tuesdays and David Drinks-Snapple-Constantly. Members of our Native American campus community who might have descriptive honorable traditional names, or relatives with such names, would not miss the point that fun is being poked at those name patterns.

The second example is briefer, a headline from a column on the Michigan Daily editorial page of April 11: "There are worse things than Apaches." As you might expect, the Apache members of our campus community would completely agree! If it is not clear why the headline is offensive, it can sometimes help in situations like this to say the title out loud with "Apaches" replaced by other traditionally oppressed ethnic or religious groups. When the writers of the first piece were approached about their use of stereotyped speech and names, the response was that this is only satire, and in particular the type of speech put into Mr. Reilly's mouth is so stereotypical that it is implausible that he would ever really speak that way; therefore, people should not take offense.

Is this what we are teaching our students, that the cruder the stereotype, the more acceptable? Members of our Native American community wrote to the author of the April 11 column objecting to the headline (and some other things in the column). Though I do not have the response, I understand that it was in part that this is only a line from an old Western, and that anyone having problems with it should take it up with the director. Is this what we are teaching our students, that it is all right to say such things as long as someone else said them first?

My point is not just that such things happen. It is more that when such things do happen, silence from the rest of the greater campus community is implicit affirmation of the value of the speech, and that, even more than the original speech, is what helps create an atmosphere that the students who are the targets of the speech will interpret as hostile. One major danger of our not responding is that silence gives people permission to escalate. How far could that go? How about a cartoon that trades on the firewater stereotype and tosses in some additional cultural offensiveness by showing a bunch of fun-loving fraternity guys on a road trip with Lewis and Clark through the Dakotas trading alcohol to Lakota (Sioux) Indians, my own people, for buffalo-hide condoms? Unfortunately, that was my third example, since I did not make it up. I only wish I had.

There are Native American students still on campus who can remember when the Daily ran that cartoon some years ago, in its University X series. Members of our community did contact the editors about this, and about previous cartoons with Native American stereotypes by this same cartoonist that had escalated to this point. We received the usual response: a lecture about freedom of the press. Of course, such a response misses the point, since the right to print such things does not imply the obligation to do so.

Even if an editorial staff is uncomfortable with what they might see as internal censorship of a staff cartoonist's work, there is nothing preventing them from running a notice beside such an effort saying the opinions and attitudes expressed in this cartoon are those of the cartoonist, and are not endorsed by the editorial staff. It would help the comfort level of many groups on this campus if we, the faculty and administrators of this great university, could do precisely the same thing. Because of the principle of academic freedom and Constitutionally guaranteed rights of expression, we cannot, and should not, prohibit people from saying and writing such things as I have mentioned. However, if we would also exercise our own freedom to respond, by saying individually and, where appropriate, as a faculty and institutionally, that the opinions and attitudes you are

hearing from this individual or group are not generally shared by the rest of us, then the students or others targeted by those opinions and attitudes will be far more likely to be able to deal with them than if we implicitly endorse those opinions and attitudes by our silence. It will also force the speakers to think about whether their speech is based on deeply held beliefs, or is merely thoughtless.

Remarks by Professor David Velleman are posted at <http://www.umich.edu/~Velleman/>