

THE UNIVERSITY OF MICHIGAN  
SENATE ASSEMBLY

Minutes of the Regular Assembly Meeting, June 20, 1977

ATTENDANCE

Present: Members Barnett, R. Browne, Butler, Caldwell, Uttal, Christensen, B. Cohen, P. Cohen, Crichton, Elving, Fowler, Gordon, Gray, J. Harris, Cheng, Hungerman, Juvinal, Kaplan, Lindberg, Livermore, Merte, Naylor, Penner, Portman, Rabkin, Schanck, Sinsheimer, Tonsor, Trojan, Votaw, Weeks, White, Zorn, Schulze, Lehmann

Absent: Angus, Aupperle, Bornstein, P. Jones, D. Brown, M. Brown, Coon, Cooper, Corpron, Diamond, Dingle, Downen, A. Edwards, O. Edwards, Fekety, Gay, Gelehrter, R. Harris, Herbert, Hildebrandt, Kish, Leary, Millard, Morley, Porter, Proctor, Romani, Shannon, Sherman, Simonds, Stross, Tilly, West, Winans

Guest: Athletic Director Donald B. Canham

CALL TO  
ORDER

Professor Lehmann called the meeting to order at 3:15 p.m.

CONSIDERA-  
TION OF  
MINUTES

After acknowledgment of a more than usual number of errors that would be duly corrected, the minutes of May 23 were approved.

SACUA  
MINUTES

Professor Elving called attention to the SACUA minutes for May 24. He noted that the minutes suggested that there had been objection to the resolution enacted by the Assembly on May 23 concerning tenure guidelines. He asked for an explanation. It had been his impression that given the circumstances (the dissemination of written documents by the administration, the press for time) the Assembly had chosen the only reasonable alternative--to request a delay and consultation. Several members of SACUA rose to explain the context of the minutes. Professor Lehmann conceded that Assembly had acted well, but added that by May 24 SACUA had been informed that the press for time concerning the guidelines had been unreal, and that both the Assembly and SACUA could now feel free to deliberate at length.

ANNOUNCE-  
MENTS

- a. Barring emergency, the next meeting of the Assembly will be September 19.
- b. The Vice-Presidency for Academic Affairs has been offered to and accepted by Professor Harold Shapiro of the Department of Economics.

ELECTION OF  
NFW MEMBERS  
ASSEMBLY  
(AND OTHER)  
COMMITTEES

Professor Lehmann introduced the list of nominees with a description of the process by which they were chosen--the call last March for nominations and volunteers, the gathering and screening of names by SACUA. He called attention to the conclusions of the Ad Hoc Committee of the Assembly on Nominations, 1971, which confirmed the procedures now in use. The spirit of those conclusions is that if SACUA members are chosen carefully, and if there is sufficient opportunity for Assembly members to consider the nominees and to offer nominees of their own, then the basic requirements for appointments to faculty committees have been met.

Appointment of the list was moved and seconded. Professor Elving commented that his objection to the procedures of appointment at the May meeting had been specifically directed towards appointments to committees and boards whose function was unclear to him. Knowing neither the function of the committee or board in question, nor the qualifications of the candidate, he felt he could not participate in the election. He had not intended his objection to be directed towards the procedure for electing Assembly Committee members, whose functions he well understood.

The motion to appoint the entire list of candidates was unanimous.

REMARKS BY  
WALD CAN-  
HAM, DIREC-  
TOR OF  
ATHLETICS

Professor Lehmann introduced Mr. Canham and called the attention of the Assembly to the resolution passed at the April meeting concerning the rise in the cost of football tickets.

Mr. Canham began by dividing his remarks into two parts: first, a review of ticket pricing policies, and second, a review of some continuing problems in athletics that would be of special concern to the faculty.

1. Ticket pricing. He explained that football is the only sport in which schools share gate receipts. That means that when, for example, Michigan plays at Northwestern we bring home ca. \$70,000 and when Northwestern plays at Michigan they take home ca. \$250,000. The disparity suggests the difficulty in planning budgets. Three years ago, he went on, the Big 10 decided to stabilize ticket pricing as much as possible by introducing certain uniform policies.

- a) The elimination of complimentary and reduced-price tickets to former athletes.
- b) The elimination of complimentary tickets to the press.
- c) The raising of prices for students and faculty.

Through the 1976 season we offered half-price tickets to students and faculty, the lowest prices in the Conference. Wisconsin, for example has charged full price for everyone for some time. Ohio

State offers 3/4-price tickets, but restricts the number to 15,000. For 1977 the entire Conference (with the exception of Wisconsin) will offer 3/4-price tickets to students and faculty, a move which will at least equalize the sources of gate receipts.

The general reason for uniform pricing policies is the terrible financial condition of most NCAA schools, three-quarters of whom are not able to meet their budgets without dipping into general funds. He reminded the Assembly that Michigan athletics are in good shape, but that our \$6 million budget must pay for everything.

Specifically, the need for new money has been generated by HEW guidelines concerning equal opportunity in athletics for women. Mr. Canham made clear that he agreed completely with Title IX as it is written, guaranteeing equal opportunity. He was concerned, however, by certain interpretations handed down from HEW, which might require some schools to drop sports. Michigan intends to promote women's athletics as fast as possible. Our only source of funds for this, however, remains gate receipts.

2. Continuing problems. Mr. Canham now turned to other problems. He said that the erosion of faculty control of intercollegiate athletics nationwide was the most serious. The Pac-10, for example, gives the authority directly to administrations. The Big 10 has until this year had a good record, but it has been tarnished by the firing of Alex Agase at Purdue by the President of the school, over the objections of its faculty board. He urged the Assembly to strengthen the principle of faculty control wherever it could.

A second major problem is the domination of the NCAA by the host of member-institutions that are very unlike Michigan. It was the small colleges who instituted the freshman eligibility rule, which nearly all of Michigan's peers opposed. Mr. Canham thought it was a bad rule in that it failed to consider the needs of the students themselves, who simply require a year of college life before engaging in tough athletic competition. He suggested that the Big 10 ought to join the new Football Association made up of large NCAA schools in order to remain influential in matters of policy. The Football Association, he emphasized, was not a super conference, an idea he deplored.

A third area of problems is the disharmony of rules governing women's and men's athletics. For example, men who transfer must spend a year on the sidelines. Women, however, are immediately eligible. Also, because women are not allowed to recruit athletes off campus, no scholarships are given to freshmen women. This would appear to be an injustice to an athlete who sees her male counterpart receiving financial aid. Moreover,

the aid program for men allows room, board, tuition, and books, whereas for women it is restricted to tuition. Mr. Canham felt that discrepancy was bound to be challenged in the courts. Finally, the standards of eligibility for women are set by each institution; for men they are set by the NCAA.

Mr. Canham ended by calling for questions, but there were none. Professor Lehmann thanked him for his remarks.

CHARGE TO  
TENURE  
COMMITTEE

Professor Lehmann called on Professor Kaplan to introduce the proposed new charge to the Tenure Committee. Professor Kaplan pointed out that this committee is established in section 5.09 of the Regents' Bylaws, but given no specific duties except to hear cases. The new charge adds to this function the same kind of advisory function enjoyed by other Assembly committees.

Professor B. Cohen asked what the basis was for the composition of the committee. It now consists of only five persons, and he noted that none was from LS&A. Professor Lehmann could not answer the question, but welcomed the observation.

The new charge was moved, seconded, and passed unanimously.

DISCUSSION  
OF TENURE  
GUIDELINES

Professor Lehmann introduced the discussion by describing the documents Assembly members had received with the call to the meeting. He emphasized that contrary to his statement of last month there was absolutely no reason to pursue our deliberations in haste. Matters were brought forward today for purposes of information and discussion, not action, and he thought that we would have several meetings on tenure guidelines in the fall.

Professor Kaplan then described the background of the document prepared by SACUA. A decision had to be made to follow one of two possible directions: either prepare a series of responses to specific problems that occur in the Nordby-Allmand draft, or attempt to survey the whole field of tenure policy. The latter seemed the preferable direction. Not only is patching weaknesses often an unsatisfactory method of reform, but it seemed that large areas of policy (or lack of it) needed a fresh look. In illustration he mentioned the issue of part-time tenure, and the fact that no description of the probationary period during which it is to be achieved now exists.

Professor Uttal asked: Does "part-time" as used in the documents refer to those whose total commitment is divided between the University and outside work, or to those whose total commitment is with the University, but divided between units?

There was general agreement that there was no satisfactory distinction between the two in the documents.

Professor Browne returned to the observation by Professor B. Cohen on the size of the Tenure Committee, suggesting that it should be enlarged, and that a SACUA liaison-member should be appointed.

Mrs. Downs suggested that the original size had been determined by convenience with respect to holding hearings. Professor Lehmann agreed to put the matter on the agenda for the next meeting of SACUA.

Professor Elving now asked what he takes to be the basic question of tenure policy. What does tenure mean for the faculty and for the University? It is essential to discover its meaning from both points of view. Our weakest argument about tenure, he said, is that it affords lifetime security. We should be prepared to define it as involving both rights and obligations.

Professor Lehmann explained that what was lacking in the Regents' Bylaws was explicit description of how tenure was achieved. The documents try to answer that deficiency.

Professor Gordon then asked about the location and status of the long-awaited faculty handbook. Professor Lehmann said he was not sure, but thought it would be published when the handbook for researchers was ready. Professor Uttal said that the researchers' handbook was still in a draft stage and far from completion. Professor Lehmann then asked Mr. Allmand for comments.

Mr. Allmand referred first to the faculty handbook. Three issues remain to be defined: conflict of interest, outside employment, and privacy of records. The legal staff is at work on them, and when they are finished a copy will be sent to SACUA for review. He next said of the researchers' handbook that a draft has been prepared by a subcommittee of the Research Policies Committee. It too is being reviewed by legal staff, but will soon be sent to Vice-President Overberger for his comments. A third handbook for librarians has also been drafted and awaits legal review. He assured the Assembly that all three books are progressing towards publication.

Professor Lehmann suggested that the faculty handbook is not likely to solve the problems of tenure that are now under discussion.

Professor White offered the hope that tenure guidelines would be devised that would manage to protect legitimate political rights but not protect incompetence. Professor Lehmann reminded us that incompetence is not now protected: faculty members with tenure may be dismissed after they have been given a hearing.

Professor Naylor noted that both documents presented to the Assembly are attempts to interpret the Bylaws, and seem to be trying to remove ambiguities. If, he speculated, we can reach agreement on what we think the Bylaws mean, does our agreement supersede the laws? Can we fix the meaning of the laws simply by interpretation, or must we ultimately change the laws themselves?

Professor Kaplan and then Professor Lehmann explained that the situation is mixed: some aspects of the Bylaws only need clarification; some require fresh language; some parts of tenure policy need to be added to the existing statements. The guidelines, however, will function as an administrative code as well as an interpretation of the Bylaws. They will be an important codification of practice.

Professor White said the situation is typical of administrative law. The Regents, like other governing bodies, might well delegate the power to make regulations to a special body.

Professor B. Cohen then remarked that the general silence in the Assembly on these vital matters is partly the result of the intention stated in the SACUA document to refer them to the Tenure Committee. To that end he moved that both documents along with a record of our discussion and other relevant commentary be referred to the Tenure Committee for study; that the Committee work towards the presentation of recommendations to the Assembly, and deliver an interim report to the Assembly at its November meeting. The motion was seconded, and discussion encouraged.

Professor Browne made two suggestions: 1. That the Tenure Committee make use of AAUP guidelines on tenure; 2. That it consider whether the numbers of faculty on tenure can be limited by quota--an idea he finds attractive.

Professor Elving supported referral because of the many pitfalls in the subject. He pointed out the problem in the Nordby-Allmand draft concerning the term "eight consecutive years."

Mrs. Nordby conceded that the word "consecutive" was not in the Bylaws and should be eliminated from that point in the guidelines. She explained, however, that the problem of defining the way time is to be counted during the probationary period is complex and real. It is important not to confuse probationary time with other kinds of time counted; for example, the time in which a faculty member accrues the privilege of sabbatical leave. There are many different reasons for counting a faculty member's length of service.

Professor Elving recalled a Regental interpretation of ten years ago concerning sabbatical leave. A man was denied his request for leave because he had spent one of the seven years necessary to qualify for sabbatical leave away from the University on a research project paid for by a grant.

Professor Lehmann advised the Assembly that in seeking to define the fuzzy areas of tenure more sharply we run the risk of shrinking its boundaries. What is now governed by "practice" might not be as spacious when it is governed by explicit code.

Professor Merte suggested that an important but hitherto unexplored aspect of the problem of tenure was the intent of a department towards a member. Aside from length of service and familiarity, the regard with which a member is held by his colleagues should somehow count in the awarding of tenure.

Professor Gordon asked what he felt to be the key question: Is tenure in a unit or in the University? Professor Lehmann replied that it was his understanding that tenure resides in the unit, that the University guarantees a hearing.

Professor Kaplan recalled the example of Wood Technology in the 1960's. When the program was discontinued, the tenure of faculty in the program also ceased. AAUP accepts that view of things, but strongly admonishes administrations to make every effort to save the jobs of tenured faculty or to find appropriate, comparable positions. The wood technologists, for example, were placed elsewhere in the University.

Professor Elving said that in LS&A tenure is in the department. When a faculty member has a split appointment, the rule is that one of the departments must accept primary responsibility--a budgetary responsibility. This rule emerged when it was proposed to give tenure to faculty teaching exclusively in the Residential College. The proposal was denied on the grounds that tenure must be in the department.

Professor Uttal remembered that the idea of tenure in the University was a gleam in the eye of Roger Heyns that disappeared (died) about 1964.

Professor Gordon pointed out that AAUP Regulations on Program Discontinuance for reasons of financial exigency contradict the idea that tenure resides in a department or unit. To discontinue programs for financial reasons, the administration must demonstrate to a faculty committee that exigency exists for the whole university, not just for a part.

Professor Uttal tried to define the global issue we were addressing. Tenure policies and interpretations have evolved over a considerable period of time. He was concerned that none of the understandings achieved with the administration in the past should be violated or lost in our quest for clear definitions.

Professor Livermore rose to the theme. He was more apprehensive than some of his colleagues about a general review of tenure policy. For some time he has asked that the review have a more limited agenda, that it deal with specific issues that have a present need to be resolved. He was skeptical about settling matters by new attempts to write laws. He would imagine that after the rewriting was finished and in effect, the same needs for interpretation would reappear. Like the common law, tenure policies are formed from experience with actual cases, actual people.

Professor Weeks opposed Livermore's description of matters. He thought everything was to be gained by revising unclear policies. Furthermore, he had always been skeptical of unwritten constitutions.

Professor Tonsor wanted to support Livermore's position. We are hedged round by contracts in too many areas of life. Tenure should be a permanent, assured status, not contingent upon quibbles about what this or that detail of policy might mean. Perhaps the Tenure Committee's conclusion might be to abandon tenure altogether.

Professor Gordon agreed with the sentiments expressed by Weeks. Tenure review might help us escape from our present reactive position, always having to respond to administrative initiatives.

Professor Naylor pointed out that our present deliberations were a response to administrative initiative.

Professor Uttal saw the need for a full review of tenure policy. Over a period of years it is natural for practices to diverge from the original intention of codes and to take on a reality of their own. A current example is the term "non-tenured track", which, he thinks, has no real existence.

Professor Elving said that most of the discussion of tenure concerned the question of how to keep a faculty member from being fired. He thought there were other important issues. To him tenure means that the University undertakes to provide a faculty member with the resources to do the job for which he was hired. Tenure involves more than job security. It involves the obligation on both sides to further the work of education and enlightenment.

Professor Gordon reminded the Assembly that the fundamental principle of tenure was academic freedom, not job security.

Professor Lehmann then called for the question on the referral of the matter of tenure guidelines to the Tenure Committee with the request for an interim report in November. The motion passed unanimously.

ADJOURNMENT

The Assembly adjourned at 5:00 P.M.

Earl J. Schulze  
Senate Secretary