

UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting of 20 June 1983

ATTENDANCE

Present Bailey, Barald, Beutler, Briggs, Brooks, Loup, Bulkley, Burdi, Burt, Boyd, Caldwell, Catford, Dahl, Danielson, Easley, Eschman, R. Green, Herbert, Hilbert, Hildebrandt, Hollinger, Janecke, Kalisch, Kelsey, Kusnerz, Lawrence, Lehmann, W. J. Lockwood, Luther, Margolis, Mermier, Meyer, Morash, Mosher, Payne, Radine, Rucknagel, Sears, Smith, Taylor, Warschausky, Whitehouse, Zweifler,

Absent Thornton, Caffesse, Carter, Cooper, Courant, Eaton, Evans, Farley, Fellin, T. Green, Deniston, Hopwood, Howe, Kaplan, Keren, Knudsvig, W. G. Lockwood, Ludema, McClamroch, Moerman, Nagy, Powell, Rae, Regezi, Ringler, Robinson, Scheele, Simon, Solomon, Wieland, Young

CALL TO ORDER AND MINUTES

The meeting was called to order by Professor Hildebrandt, chair, at 3:18 p.m. and the minutes of the meeting of 18 April 1983 were approved as distributed.

REMARKS BY CHAIR

Professor Hildebrandt invited the Assembly members to comment on the minutes of SACUA meetings enclosed in the packet.

Professor Lehmann inquired as to why the names of persons appointed to committees were not included in the minutes. Chair Hildebrandt said that occasionally persons decline committee membership and the final slate is not ready at this time. He added that it is customary to include the list of members with the September packet.

Chair Hildebrandt then made several remarks.

1. He commented on the action the Regents took at the June meeting concerning the non-classified research proposal which had been recommended to the Assembly by the Research Policies Committee and ultimately adopted by that body. He reviewed some of the arguments by the Regents as to why they would not accept the faculty proposal.

a) The Regents felt that the language of the principle statement was ambiguous.

b) There was concern that, potentially, "witch-hunts" could be brought about if the principle statement was accepted by all schools and colleges.

c) They felt that the statement forced the Regents to take a political position, which they were hesitant to do.

d) They suggested that the problem, if it is a problem, is not a serious one.

e) Some of the Regents felt that it was difficult to determine the criteria for judgment as to the type of research that was being carried out.

f) The Regents also felt that at the heart of the whole principle was the question of openness which they felt was central to the University, and by adopting the proposal, some of that openness would be removed.

2. The chair's second remark dealt with Professor Kaplan's question as to why the infirmary was closed. He explained that only 94 students were admitted to the infirmary last year, at a cost of approximately \$532 per day. The administration and an advisory committee, which had student members, recommended that the infirmary be discontinued.

3. Professor Hildebrandt commented on a letter by Professor Janecke sent to SACUA requesting that letters from Professor Charles Tilly and Professor Thomas Dunn be made public. The letters expressed the authors' concerns that non-members were not allowed to speak at the April Senate meeting on the issue of non-classified research. He explained that the former chair had announced that if there was time, a motion to expand the debate to non-Assembly members would be entertained; but as the hour had already reached 6:30 p.m., it was his judgment that the Assembly had no wish to hear other than Assembly members. Professor Hildebrandt pointed out that it is the prerogative of the Assembly to determine who can speak, and no motion from the floor to hear additional speakers was forthcoming.

4. Professor Hildebrandt announced that Professor Kaplan's report on a meeting he attended of the Association of Michigan Collegiate Faculties is in the SACUA office, and invited members to call the office if they are interested in obtaining a copy.

FACULTY GRIEVANCE PROCEDURE

The chair invited Virginia Nordby, Policy Advisory to the Vice President for Academic Affairs and chair of the Task Force, to comment on the subject before the Assembly proceeded with the resolution on the grievance procedure.

Mrs. Nordby informed the Assembly that the Task Force had met several times in May and June and received comments, suggestions, and questions raised by the Assembly, deans, executive officers, and by faculty committees of three schools. She noted that the final revised document with a proposed set of grievance procedures for research scientists was now before the Assembly. She then

explained a point which the Task Force felt was not fully understood in their earlier presentation - that the document contains model procedures which are open for discussion and allow for some adjustment and amendment by the faculties of schools and colleges as the units review their traditions.

Mrs. Nordby called attention to several aspects of the procedures which the Task Force regards as probably not negotiable:

1. The concept of a cognate member from outside the grievant's unit.
2. Some of the due process procedures.
3. The system for appeal.

Chair Hildebrandt asked if the Assembly would prefer to move to open discussion of the proposal or hear remarks on the subject by Professor Gold, Chair of the Civil Liberties Board (CLB), who had reviewed the grievance proposal document and supplied a response which was enclosed in the packet for this Assembly meeting. Professor Radine suggested that Professor Gold speak at this time.

Professor Gold explained that the CLB become involved with a review of the grievance document rather late, and that the document to the CLB is the work of only two board members, Professor Railton and himself. He then commented on only those parts of the interest to the CLB which he felt were relevant to the discussion at this Assembly meeting.

His first point dealt with the constitution of the review board. He noted that in so many cases concerning civil liberties, it helps to take the perspective of a minority, even an unpopular minority. In answer to the question, "what is the likelihood of having a fair and impartial board?", he read the first paragraph beginning on sentence 4, page 3, of the memo to the CLB.

Professor Gold's second point was in regard to the admission into the grievance procedures of confidential materials. He then read paragraph 3, page 2, of the memo to the CLB.

His third and final point had to do with a file maintained of cases that go through the grievance procedures, and he read the second paragraph on page 3 of the document.

He closed his remarks by reading the final paragraph wherein Professor Railton and he felt that..."the CLB ought to congratulate the Task Force publicly for having devised a procedure that obviously reflects considerable respect for civil-libertarian principles."

Professor Hildebrandt then invited the Assembly members to comment on Professor Gold's remarks.

Professor Warschausky asked Professor Gold to clarify the method to be used to guarantee impartiality on review boards.

Professor Gold said that no method will guarantee that. It was his understanding

that the Task Force did not want this to be an adversary procedure. He said that the goal is to get as impartial a body as possible, and to do that, each party would pick people from another party's sub-panel, the sub-panels originally constituted by lot.

Mrs. Nordby added that the hope of the Task Force in setting up the panels was that the panel members would not view their role as that of advocating on behalf of the faculty member or, for example, a department chair. The Task Force intended for the three panel members to think that they are representing the broader goal of the entire university. She said that the bias of the panel is an appealable issue, and that the appeal procedure would serve as a check particularly in the smaller schools and colleges.

Professor Livermore, a member of the Task Force, made several comments on the subject. He began by suggesting that the solution of widening the number of people available to serve on a panel would go in the direction of finding someone partial to the unpopular view. If the test is impartiality, he thought that such a widening might lead to there being members who are openly partial to, in the view in the larger community, what might be considered as unpopular.

His second comment dealt with the issue of confidential material. He explained the concern that all Task Force members had about this issue and the effort gone into arriving at a solution. He felt that none of the members is entirely happy with the mode that was devised.

Professor Livermore said that although the Task Force had not discussed the mode mentioned by Professor Gold, he felt that a summary of confidential material by an outside person might still not resolve the problem of impartiality. He said that the alternative of no one having access to such material could lead to the problems of important material not being available for arriving at a just solution.

On the issue of institutional memory (files) of grievance cases, he felt that Task Force would support any reasonable way to keep the records and that keeping the records is important. He said that the CLB might be the appropriate body to do this and the board might also have a monitoring rôle to see what kinds of problems are arising in the various schools and colleges. Patterns could be identified.

Professor Friedman, former chair of the CLB and former member of SARC, said that when involved with the issue of confidentiality he had two things uppermost in mind. The first was to avoid developing a document that was too unwieldy. Secondly, summaries of confidential materials allowed issues to surface which might not have otherwise. He felt that the notion to have the University ombudsman prepare the summaries was a burdensome addition to the document. He said that he resisted the idea of having an outside person prepare a summary of confidential material.

Professor Warschausky then made the motion for the Assembly to approve the

grievance procedures as recommended by the Task Force. The motion was seconded and the chair asked for comments and questions on the motion.

Professor Bulkley asked for clarification on two items concerning grievance matters. Referring to paragraph 2, page 3, of the Task Force document, he wanted to know what, "...except those (aspects of the decision making process) which involve conclusionary judgments about professional competence" meant. Secondly, he asked about the sentence concerning the procedures not being..."available for challenges to the desirability of unit or University policy..." He then asked if there was any procedure for swearing in witnesses.

Professor Livermore said that the intent of the Task Force for using the word "conclusionary" was specifically to exempt judgment of professional competence for grievances. He indicated that if persons are claiming to make conclusionary judgments about competency, and they are not the ones who are ordinarily understood to be the correct ones to make such judgments within the department, that departure from accepted procedure would be grievable.

In answer to the second question, he said that if it is a unit policy, a policy which has arisen in the appropriate way, then it cannot be grieved. If it is claimed that a policy is not being applied equally and fairly to a person, it is grievable.

Professor Bailey suggested that Professor Livermore's comments be used to amplify this section of the grievance procedures.

In response to the question of swearing witnesses, Mrs. Nordby said that the grievance procedures were not intended to follow the usual court rules. She said that it would be useless to swear people because there is no mechanism for disciplinary or penalizing people who perjure themselves.

Professor Barald asked who is to determine if a matter is grievable, and how is the evidence presented. Is there a mechanism for deciding what is grievable?

Mrs. Nordby responded by saying that first, the chair of the body will be a cognate member from outside the unit involved who hopefully will have some experience in dealing with these matters. She noted that the decision that the matter is not grievable is always an appealable decision, and can be appealed all the way to the Vice President for Academic Affairs. She said that in order for the panel to choose not to hear a grievance, the panel must conclude that the matter is patently frivolous or without merit, based upon an interpretation of the facts most favorable to the grievant. She added that the Task Force advises that when in doubt, proceed with the hearing.

Professor Warschausky questioned Professor Livermore's explanation of "conclusionary judgment" and related why he felt that it is not as significant an exclusion as it appears to be.

Professor Livermore responded by saying that the Task Force only intended

that conclusionary judgments are not grievable, but all procedures up to that point are grievable.

Professor Lehmann spoke against the document for one major reason and three minor ones. He felt that the proposed grievance procedure takes review out of faculty governance entirely. He saw no provision for the informal role which SARC used, and felt that there is no continuity except as one constructs one.

For his sub-points, Professor Lehmann thought that the document seems excessively legalistic. He saw parallels between it and Bylaw 5.09, and he noted that there are presently available procedures in units, however objective they may be.

For his third point, he suggested that the resolution itself is objectionable because it is an administrative procedure which needs no approval from the Assembly. It could be promulgated, and could be approved without abolishing SARC, thus change a standing committee by default.

Professor Lehmann's final comment was in regard to the timing of Assembly action on the resolution. He suggested that no action be taken before the resolution can be discussed with faculty members of the units.

Professor Whitehouse asked how a grievant can become aware of the confidential material being used against him. He wanted to know what is considered confidential in a court of law regarding academic records. He added that he felt that the previous point that a unit's procedures are not grievable raises some fundamental questions.

Responding to Professor Whitehouse's question, Mrs. Nordby said that if confidential material had been involved in the original decision which is being grieved, it will be up to the panel, undoubtedly at the suggestion by the grievant, to take the initiative to review those materials.

Regarding the question concerning confidentiality of academic records, Mrs. Nordby said that the current situation in the courts of law is in a state of flux. She then reviewed several cases which demonstrated this condition. She reminded the Assembly that we are involved in an internal grievance procedure, not a court of law.

Professor Whitehouse said that he could see where identities of persons supplying the material might be kept confidential, but could not see any example of where confidential material could be kept from a grievant if that material affects his/her welfare.

Mrs. Nordby said that this is an issue where there is disagreement around the country, and used a specific case to illustrate the point. She said that the Task Force felt strongly that it, under the guise of proposing a grievance procedure, should not recommend major changes in the University's approach to confidentiality, particularly in tenure evaluation. It seemed to her that if faculties and others wish to review it, that it should be done outside the context of a grievance procedure.

Professor Lehmann then moved to postpone the motion indefinitely. After some discussion, he accepted a suggested change to postpone until the Fall of 1983. The implication of his motion was to give schools and colleges more opportunity to discuss the matter.

Professor Burt asked Mrs. Nordby if she had a tally of the schools and colleges that have reviewed the proposal.

Mrs. Nordby said that it has been discussed with the deans in AAAC, and they were all supportive of it. The Schools of Music, Natural Resources, and Medicine are also reviewing the proposal. She felt that many of the deans are waiting to see what action is taken by the Senate Assembly before referring it to a faculty committee.

Professor Hollinger said that he did not see the point of the Assembly discussing the grievance proposal after the schools and colleges have had a chance to act on it, since many seem to feel that it is the unit's action on it that is the most substantive element of the adoption of the procedures. He felt that the Assembly's purpose in discussing it at this meeting was to give advice to the schools and colleges as to whether or not the procedures should be adopted by them. He could not understand why Professor Lehmann did not simply urge the schools and colleges to vote against the resolution.

As there was no further discussion, Chair Hildebrandt called for a vote on the motion to postpone action on the grievance procedures until the Fall term. The motion was defeated (10 yes, 19 No).

Professor Hildebrandt then invited further discussion on the main motion.

Professor Lehmann responded to Professor Hollinger's previous comments by saying that he was trying to be persuasive and allow some additional input to come back to the Assembly, but his main interest is to protect the notion that a grievance procedure properly belongs as a part of faculty governance. He suggested that if the Vice President wants to promulgate the proposal he might do so and the schools and colleges could accept it and SARC could stand. But that is awkward. He would favor having a body, "...separate from the schools and colleges, which this body, representing the Senate, in effect, controls." He said he was opposed to the resolution, but would be disposed to allow as much discussion and gather as much information as we can get.

Professor Radine asked if it would be appropriate to put the three suggestions made by Professor Gold in the form of a resolution.

Mrs. Nordby noted that the first two points would require substantial revision of the document, and the third point can be handled administratively.

Chair Hildebrandt read the main motion as follows:

That the Assembly approves the Grievance Procedures as recommended by the Task Force on Grievance Procedures.

Professor Warschausky, returning to his point about #2, page 3 of the document concerning conclusionary judgments about professional competency, wanted some assurance that an approved grievance procedure would contain a clarifying statement.

Mrs. Nordby responded by saying that members of the Task Force, herself particularly, are being invited to meet with faculty of schools and colleges to discuss this. It will be her intent to respond to all comments on that point and will take Dr. Gold's memo with them and discuss with the faculty how they would implement his concerns if they so desired. The Task Force will have a detailed memo of the previous Assembly discussion of this, another detailed memo of today's discussion, and she plans to have all of that with the schools and colleges as they begin reviewing the matter.

Professor Friedman felt that this was a good point, and that the grievance procedure document is only a model language, and as it is brought before the various schools and colleges, issues such as the one Professor Warschausky raised should be discussed.

Professor Taylor asked if the Assembly is waiting for acceptance of only point 1 of the circulated resolution. The answer was yes.

Chair Hildebrandt asked for a voice vote to approve point 1 of the resolution. The motion carried.

He then asked for a move to accept point 2 of the resolution. Professor Briggs so moved and it was seconded. The chair asked for discussion on the motion, which read, "That the Assembly recommends to each school and college that they approve the new Grievance Procedure."

Professor Taylor felt that the motion seemed to be more "iron-clad" than the committee is recommending, and moved that the words "the substance of" be inserted so that point 2 of the resolution would read, "that the Assembly recommends to each school and college that they approve the substance of the new Grievance Procedure." The amendment was supported.

To expedite the matter, Professor Briggs withdrew his original motion.

Chair Hildebrandt called for a voice vote in favor of the amended motion. The motion carried.

Point 3 of the resolution was then brought before the Assembly. Professor Beutler moved that the words "the substance of" be inserted so that to move point 3 of the resolution read, "that as each school or college approved the substance of the new grievance procedure, the Senate Advisory Review Committee (SARC) shall cease to have jurisdiction over any grievances from those units." The amendment was seconded.

Professor Dahl commented that given the fact that there was no timetable for the approval of the new grievance procedure, he wondered if this wasn't a

rather sloppy way to eliminating SARC. He suggested that it might be better to retain that body and address this issue separately.

Professor Hildebrandt responded by saying that if only one college does not accept the new procedures, that college would have nothing. It was in the interest of SACUA to bring in a specific motion to remove SARC when all schools and colleges have adopted the grievance procedures.

Chair Hildebrandt then brought the motion before the Assembly and asked for a vote by voice. The amended motion was carried.

REPORTS FROM SENATE ASSEMBLY VICE PRESIDENTIAL ADVISORY COMMITTEES

1. Academic Affairs

Vice Chair Donald Eschman noted that the members had a copy of the report and offered to respond to questions from the floor.

Professor Bulkley asked if the Assembly ruled in the question of whether the Engineering College review of its Department of Humanities were proper. The answer was that it was ruled that it was proper.

Professor Barald asked about the issue of the problems created by changing appointment fractions of some medical faculty.

Professor Eschman said that the last report given to the committee was that it was being resolved between Vice President Frye and the Medical School. He indicated that it has been a subject that has been brought before the Academic Affairs Committee every single meeting this past year. There has been no resolution of the issue.

2. Research Policies

Professor Robert Moyers, committee chair, made several comments about the recent failure of the Regents to accept the Assembly's resolution regarding non-classified research at the University.

He spoke briefly about some of the comments made by members of the Board of Regents. He said the main emphasis was on the issue of restriction of inquiry. Other points included the opinion that this was an attempt to force Department of Defense research off the campus (Regent Baker), that this created a new policy that would open new doors (Regent Roach) - which they were reluctant to do, that there really is no problem and that the Research Policies Committee should not have presumed the policy on classified research automatically applied to non-classified research as well (Regent Brown).

Dr. Moyers said that he was pleased that the vote was resounding, one way or the other. He was proud to hear the Regents express themselves so firmly on the matter of academic freedom and freedom of inquiry. He also felt that there were some implications in the Regents' action.

The first implication was that we are left where we have been for some time, with two sets of guidelines - one for classified research, another for non-classified research. It seemed to Dr. Moyers that this doesn't bother the Regents, but it bothers the faculty, the Senate Assembly, and particularly the Research Policies Committee. He related how a colleague expressed to him that if the two policies remain, this faculty will continue in the unusual position of being able to do any kind of research on the campus that is harmful to human beings so long as it is not done under contract.

Under his second implication, Dr. Moyers said he was going to suggest that the Research Policies Committee, from which he had recently resigned the chair, not address this matter again immediately, but take up issues that were postponed for a year while the resolution on classified research was devised, only to be rejected by the Board of Regents.

Professor Moyers closed his comments by remarking on the subject of faculty governance. He urged the Assembly to pay close attention to faculty governance, as he believed that the actions of the Regents on the non-classified research proposal have some implications for this faculty.

3. Financial Affairs

Professor Thomas Gies, noting that the members had a copy of the report, asked for questions from the floor. He offered to take any questions or comments to the standing committee. There were no questions.

4. State Relations

Committee chair Peggy Kusnerz reviewed the activities of the State Relations Committee during the past year and offered suggestions for future committee work.

She discussed the ramifications of the changes of personnel in state government as a result of the last election, and how that may effect higher education. She explained that the University had to identify the new administration's attitude on higher education, and the State Relations office had to begin anew to educate newly elected officials about the activities of the University.

Ms. Kusnerz reviewed several aspects about the budget, including the increased income tax and the proposed differential funding for state schools. She noted that the University proposed 9% increase will really be only about 6% because 3% is make-up money from a previous Executive Order cut in funds.

Her final topic was the future of higher education in Michigan. She said that several members of the SRC attended a symposium on the impact of coordination in higher education, where there arose the possibility of establishing a state controlling board for higher education. Other future issues included the possibility of eliminating some state institutions, and across-the-board funding cuts. She said that the Governor will appoint a blue-ribbon committee to investigate the status of higher education, and

suggested that the SRC and the Assembly monitor the activities of this committee.

She concluded her remarks by recommending that there be more coordination between the SRC, the University Relations Committee and FLAG (Federal Legislative Advisory Group).

Professor Whitehouse asked why the State Relations Committee does not have a formal relationship with AMCF (Association of Michigan Collegiate Faculties). He urged that a formal relationships be established, as it once was.

5. Student Relations

Professor Harvey Bertcher, committee chair, read the annual report of the Student Relations Committee. The committee's major work was in the area of recruitment and retention of minority students at the University. The committee agreed on some steps which they thought might be constructive to improve the current situation.

The committee also considered a proposal for a Code of Student Conduct, which is currently being reviewed by the Administration.

The final subject was a student member's concern about admission to closed classes.

The annual report of the SRC is in the SACUA office and is available to the Senate Assembly members.

6. University Relations

A copy of the report of the activities of this committee was made available to the Assembly members at the meeting. Professor Raymond Grew, chair, welcomed comments or suggestions from the Assembly and SACUA which would be used for guidance by the committee.

He suggested that it would be an advantage for the committee to have closer and more frequent coordination with other SACUA committees.

His final point was his committee had the remarkable opportunity to play a more active and valuable role because of the guidance, encouragement and cooperation from Vice President Cosovich and Acting Vice President Jacobson.

NEW BUSINESS

Professor Hildebrandt noted that this was the last meeting for SACUA member Professor David Hollinger. He thanked Dr. Hollinger for his service in faculty governance.

ADJOURNMENT

The meeting was adjourned at 5:05 p.m.

Respectfully submitted,

Charles C. Kelsey
Interim Senate Secretary