

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting of 15 September 1986

ATTENDANCE

Present: Arnett, Ascione, Barlow, Bassett, Bissell, Borcherts, Briggs, Burdi, Vorus, Checkoway, Chudacoff, Cohen, Comninou, Craig, Dandekar, Debler, DeCamp, Dobbins, Frost, Eggertsen, Gage, Glover, Gray, Hanks, Hollingsworth, Hook, Larson, Lavoie, Lehmann, Lenaghan, Leonard, Lorey, Lougee, Loup, Lusk, Malvin, Margolis, Manis, McCarus, McClamroch, Meyer, Miller, Moerman, Moore, Moran, Mosher, Nadelman, Ness, Oleinick, Olsen, Olson, Pierce, Reed, Rosenthal, Ross, Hudson, Sanders, Sargous, Shannon, Silverman, Stebbins, Thomson, Weiler, Wiseman, Yocum

Absent: Brewer, Haefner, Han, Lewis, Lockwood, Rutledge, Schauer, Schteingart, Seidler, Snyder, Stapp, White, Berent

Professor William Stebbins convened the meeting at 3:18 p.m.

MINUTES

The minutes of 16 June were approved as written.

MATTERS ARISING

Professor Stebbins announced new Assembly members Professors Berent, Hudson and Vorus. He indicated that this would be a very active year for Senate Assembly as it considers items generated by SACUA, Senate Assembly and other University Committees, and initiatives of the Executive Officers. SACUA's theme for the year is "Shaping the New Excellence."

ANNOUNCEMENTS

Ms. Loup described two faculty recognition awards recently proposed by SACUA. The first would recognize a faculty member's contributions to the University through years of service. Discussions continue on this proposal. The second award will be made for contributions to faculty governance at the University level. Two faculty members will receive governance awards this year at the State of the University address on October 14. SACUA continues to work on the procedure for selecting awardees in future years.

Professor Reed reported that at their September meeting the Regents will be asked to approve a change in employee health insurance premiums. SACUA has conveyed the following resolution to the Regents:

SACUA urges The Regents to postpone action on "Change in University Support for Health Insurance." This exceedingly complex issue addressing important policy changes has been strongly opposed by CESF and SACUA.

We urge further consideration and consultation before proceeding.

Reed noted that the University's premiums are rising higher than are those of comparable institutions. Members of CESF will attend the Regents meeting and be available to answer questions and amplify their concerns should the Regents so desire.

COMMITTEE APPOINTMENTS

In addition to those listed, Professor Stebbins announced nominations of Professor Sally Lusk for a three-year term to CESF and Brenda Johnson for a one-year term to Government Relations. Professor Moerman then moved, Professor Lehmann seconded, that the nominations be approved as listed and amended. Motion passed.

STATEMENT ON GENDER AND RESPECT IN THE UNIVERSITY COMMUNITY

Professor Moerman explained that the statement was prepared by a SACUA subcommittee after discussions with the Office of Academic Affairs. SACUA views the statement as one of principle, articulating appropriate behavior for faculty members as they relate to students, and approved it unanimously. Drafted by central faculty governance for the faculty as a whole, the statement does not require action by other University bodies and, thus, if approved by the Assembly, would not be forwarded to the University Administration.

Professor Checkoway moved, Professor Nadelman seconded, that the statement be approved. Professor Sanders asked if any sanctions were tied to the statement. Professor Moerman replied there were not. At the Chair's invitation, Mrs. Nordby explained that sanctions are provided by a University Presidential policy of November 1980, the Standard Practice Guide and Federal and State laws; in her view additional ones are not needed. Professor Shannon said he could not support the statement because of its approach to relationships involving consenting adults. Professor Debler asked why the statement addresses only sexual matters when others, such as borrowing money from students, can also pose conflicts of interest. Professor Moerman replied that action on the statement did not preclude considerations of similar matters at another time. SACUA, however, believed that problems stemming from sexual relationships were serious and common enough that separate action is in order.

Professor Eggertsen questioned the impact on public relations the statement might have, especially with parents of prospective students. Professor Moerman acknowledged this risk but said that the seriousness of the problem outweighs it. Professor Lusk appreciated the statement's explicit treatment of the idea of respect while Professor Ness supported the statement as a fundamental norm which faculty members share. Professor Debler asked if Assembly support of the Standard Practice Guide would serve the same purpose as endorsement of the statement. Professor Moerman said it would not. The Standard Practice Guide speaks about co-workers, supervisors and employees and is not explicit regarding faculty-student relationships. SACUA views the proposed statement not as replacing the SPG but as a crystallization of the faculty view regarding these relationships.

Professor Chudacoff asked if the statement could be used as a legal document. Mrs. Nordby replied that current laws already cover actionable offenses and it is unlikely the statement would be cited as policy. Noting that this was an important and timely issue, Professor Hook asked if the statement would proscribe faculty-student relationships of all kinds. Professor Comminou said that such a policy would be unrealistic in Ann Arbor, with its many young faculty members and thousands of students. Professor Shannon rejected the notion that a loving, personal relationship would always be wrong. Professor Moerman replied that the statement does not proscribe all relationships but iterates that they are fundamentally professional ones. When deciding what kind of relationship to have with a student, the faculty members is urged to take this professional responsibility into account. Professor Lehmann called the question. Motion passed.

AD HOC COMMITTEE ON CLASSIFIED RESEARCH REPORT

Professor Stebbins reported on plans for widespread campus discussion of issues raised by the report and urged Assembly members to participate. Based

on its own discussion and with input from the Research Policies Committee and the Senate Assembly, SACUA will develop a statement about classified research on campus and bring it to the Assembly in November. Pending support, SACUA would then forward the statement to the Executive Officers for transmittal to the Regents who will make the final policy decision.

The remainder of today's meeting would be devoted to eliciting members' comments, questions and concerns. SACUA invited Professor Arch Naylor, representing the ad hoc committee, to introduce the report. Next, SACUA proposed, the Assembly would divide into small groups, each joined by a member of the ad hoc committee and someone from SACUA, for a half hour of intensive discussion. Members will then reassemble. A spokesperson from each group will report on these discussions, with members of the ad hoc committee available to respond to comments and answer questions. Other members of the Ad Hoc Committee present at this discussion were: Tom Battle, Carl Cohen, Rebecca Eisenberg, David Hollinger and Jim Lesch.

Professor Naylor

Professor Naylor began his remarks by saying that the report must speak for itself. It is the report that the Assembly must eventually choose to support or not. His comments will underline some aspects of the report, mention some things which it does not say, and note some facts about the current situation at the University regarding research contracts.

In keeping with its charge, the Committee recommends a policy specifying what kind of research contract may be accepted by the University. The current Policy on Classified Research is also one regarding what research contracts are acceptable. Neither policy is a global one about the conduct of research at the University. Both regulate extramural agreements and for both the final test must be: does the signed contract satisfy the policy. Neither policy regulates other aspects of research and scholarship. Indeed, the "regulation" of research at any university must be done with a careful understanding of just what is being regulated.

The current policy and the proposed policy differ. The first applies only to classified research contracts while the second would apply to all research contracts. In his view the spirit of the proposed policy is summed up in the following sentence from the Committee's report:

Research that is secret in either its conduct or results is directly incompatible with [the] fundamental University goals of furtherance of knowledge through the discovery and interchange of scientific information and its faithful transmission to the younger generation in the classroom and laboratory."

The proposed policy attempts to incorporate explicitly this principle of openness into extramural contracts. This incorporation should not noticeably change which contracts are actually signed. All research contracts would be open to inspection by the public, as they are now.

A researcher's ability to publish results would not be significantly restricted. Currently this is a goal of University contract negotiators, and an inspection of a sample set of contracts showed that they have been successful in achieving it. Because the University may be given proprietary information by others and agree to protect it, the proposed policy allows a researcher's publication to be inspected by the contractor for the limited purpose of insuring that the contractor's information will not be inappropriately published. This also is a goal that University negotiators have successfully achieved.

In summary, the proposed policy is in harmony with current University practice.

It is unlikely that any classified contracts could be signed, except, perhaps, for those for access to information only. The proposed policy does not mention classified research contracts explicitly. They would fail the test not because they have been singled out by the policy, but because secret, closed research contracts from any source are incompatible with the principle for openness at this University.

The proposed policy has no "end-use" provisions, that is, provisions restricting research because of potential use of the results. It would be wrong to say, however, that the policy eliminates the end-use provision. The policy would apply to all research contracts while only the one or two currently active classified research contracts are subject to the end-use part of the present policy. Assuming that neither of these classified contracts would satisfy the proposed policy, we might better say that the new policy would effectively eliminate those contracts to which the current end-use provision now applies. The Committee might have chosen to recommend a new end-use provision but did not. Different members had different reasons for not taking this step. Similarly, Assembly members will have to decide if an end-use provision applying to all research contracts is a good idea.

Finally, if the proposed policy is accepted as outlined, there is really no need for special review procedures. The publicly available contract would contain all information needed to determine compliance or lack of compliance.

DISCUSSION FORMAT AND MINORITY REPORT

Professor Carl Cohen asked for a point of privilege, noting that there was also a minority report. He asked the Assembly to attend to it as carefully as

to the majority report. Professor Weiler spoke to a point of procedure, saying that he preferred a statement on the minority report followed by discussion in plenary session rather than in small groups. With respect to the latter, Professor Stebbins explained that SACUA was experimenting in response to requests last year for greater participation in discussions by Assembly members. He also noted that Assembly members had been furnished with both majority and minority reports and then invited Professor Cohen to give a statement on the latter.

Professor Cohen said that he saw no need to address the substance of the minority report in detail or to rehearse the arguments used to develop it. Instead, he hoped to convey a sense of where the minority came out in the committee's discussions. He referred to three alternatives, Alpha, Beta and Gamma, to the majority report, Delta. The minority report, he stated, is a Gamma and proposed that the current policy on classified research be deleted. That policy has two arms, one based on openness, the other on end-uses. Although the majority report would eliminate the latter, it retains the former and, in so doing, suggests that when the ideals of openness and freedom collide, the former must almost invariably be paramount. He challenged this stance, argued the importance of ideals in the University community and urged that freedom of inquiry be regarded as a preeminent ideal.

Professor Stebbins thanked Professor Cohen for his remarks and reiterated the existence of two reports, majority and minority, from the ad hoc committee.

Relative to the format for the ensuing discussion, Professor Sanders moved, Professor Pierce seconded, that the Assembly refrain from breaking into small groups and instead have discussion of the whole. In response to questions from Professors Moore and Ness, the Chair explained that the Assembly would reassemble after small group discussion and hold a plenary discussion. During the reporting out from small groups, Assembly members would be free to speak. Professor Malvin noted that because only 45 minutes remained for today's meeting, breaking into small groups would reduce the amount of time available for a plenary discussion and that feedback from the small groups would be minimal. The subsequent vote showed 24 Yes and 27 No on the motion. Professor Stebbins then delineated six groups and announced their meeting places.

Reports Back

[In each of the following reports, only the major issues, questions or concerns are noted. Name in parenthesis is person delivering report.]

Group 1 (Professor McClamroch)

The reports highlight a number of inherent contrasts:

- * openness vs. freedom.

- * freedom of the individual vs. freedom of the institution.
- * how the proposed policy of the majority report would apply to projects such as the Tanter proposal.
- * how that policy would continue the trend of reducing the number of classified research projects at the U of M.
- * the impact on industrially funded research.

Group 2 (Ms. Loup)

- * Concern about the amount of proprietary and classified research in the University and the impact on it of the proposed policy.
- * Relationship to the statement on gender and respect: both rest on the premise that members of the University community must monitor their own behavior.

Group 3 (Professor Oleinick)

- * The Issue of freedom is not as simple as the minority report suggests; it is part of the larger issue of freedom in society.
- * There is a question that the majority report may be too liberal with respect to proprietary research even while the strength of that report is its very inclusion of proprietary research.
- * Concern was expressed about using the University's facilities and claiming proprietary interest.
- * The right-to-know research results developed in the University are not covered in the majority report.

Responding to Professor Stebbins' invitation, Professor Naylor noted that the proposed policy addresses the kinds of contracts which can be signed with people outside the University. As such it is a different discussion than Group 3's last-named concern. Professor Ross suggested that sponsors of proprietary research presumably would not want a series of policies not to publish to get around the University's guidelines. Professor Olsen suggested that individuals wanting to pursue this kind of research would be free to leave the University for a short time. Professor Naylor cautioned that the proposed policy should not be interpreted as banning proprietary research; it does not.

Group 4 (Professor Dobbins)

Although the group did not have time to reach consensus, it was leaning in support of the majority report. Here, he would speak mostly for himself.

* The proposed policy would be a general research policy in contrast to the current one which addresses only classified research.

* Proprietary research may precipitate many concerns.

* Faculty members engaged in proprietary research may produce data unfavorable to the sponsor and the sponsor in turn might try to alter or suppress the data. Should that occur, the faculty member would find support in the proposed policy.

Professor Bennett Cohen affirmed the majority report. As former Chair of Research Policies Committee, he noted that proposal review was done on a case-by-case basis and interpretations of the present policy sometimes varied as a function of committee membership. This troubled many of his colleagues. The proposed policy focuses on the question: can the research results be published in a reasonable amount of time?

Professor Carl Cohen stated that the minority report seeks to highlight two problems with the majority report. The first is the majority report's application of the principle of intellectual consistency. However, because the institution to which it applies this principle is itself inconsistent, the attempt will have painful consequences to some researchers. The second problem concerns its infringement upon freedom. It is not correct to say that it will infringe upon freedom, but it will have some impact on it, as there is conflict between openness and freedom.

Professor Moerman noted that discussion in his group concerned the hope of many in the University for the expansion of proprietary research support over the near term. The proposed policy would give guidelines of potential industrial sponsors and support to the faculty researchers.

Professor Weiler noted that it would be helpful to discussion if the minority report could give some examples of research which would be banned under the majority proposal but permitted under the minority report. Professor Carl Cohen replied that it was not possible to do that well but it is conceivable that this would be the case. Pharmaceuticals, DNA technology and engineering technology would be likely areas for this to occur. It is also possible that classified research could be prohibited. Faculty, he maintained, should not cramp their own style.

Group 5 (Professor Briggs)

* Although it offers a one year rule as the basis for contractual negotiations, the majority report does not spell out procedures for deviations from this.

* The end-use provision still needs some attention if only in the form of a faculty document such as the one on gender and respect approved today as a guiding principle.

* The majority report effectively rules out classified research by virtue of the way the government classifies access; classified research could still be done in Ann Arbor, at ERIM, for example.

* Regarding procedures, where there is proprietary information and a prohibition to publish, litigation may result.

Professor Eisenberg cautioned against misconstruing the proposed policy. It does not mandate that research results must be published within one year. Rather it rules out the signing of contracts which preclude publishing results within a reasonable length of time. Professor Ness asked who would decide the reasonableness of time. Professor Eisenberg replied that the present approval process, which checks compliance with contracts, would add this as another check.

Group 6 (Professor Arnett)

*What kind of research would be prohibited by the majority report?

*If contracts are available for public scrutiny, will research be discouraged?

*What will be the impact of time limits on publication?

*Are the restrictions governing publication a disguise for an end-use clause.

Professor Hollinger spoke to the conflict between openness and freedom. It has been suggested, he said, that the majority report doesn't balance these and that whenever they are in conflict, the majority report says that openness must prevail. He challenged this interpretation, noting that there are many ways to achieve balance. There is also a need to clarify which freedom is at issue. The proposed policy would protect the freedom to create and maintain enclaves of privacy within the University, protected from outside inquiry. Much depends on how one describes matters.

Professor Carl Cohen agreed that description is important and argued the need for freedom to do one's intellectual work productively and powerfully, without being badgered by the need of government agencies to classify research even on only rare occasions.

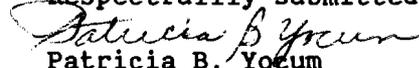
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Professor Stebbins brought discussion to a close. He invited members to convey their thoughts in written or spoken form to SACUA over the next month and to participate in the forthcoming open forums concerning the reports.

ADJOURNMENT

The meeting adjourned at 5:22 p.m.

Respectfully submitted,



Patricia B. Yocum
Senate Secretary