

Minutes of 22 November 1999  
Circulated 23 November 1999  
Approved 13 December 1999

**THE UNIVERSITY OF MICHIGAN  
SENATE ASSEMBLY  
MEETING MINUTES OF 22 November 1999**

ATTENDANCE

Present: Alcock, Anderson, Andrews, Bartlett, Birdsall, Burns, Christiansen, Dick, Dunkle, Foss, Gobetti, Guthrie, Harrington, Jacobsen, Juster, Karnopp, Karr, Kleinsmith, Konigsberg, Kossoudji, MacAdam, Malkawi, Moseley, Navvab, Penner-Hahn, Raisler, Robertson, Rocchini, Savage, Scheiman, Schneider, Sheil, Taylor, Teasley, Trumpey, Uribe, Ward, Whitehouse Jr.

Alternates: None

Absent: Antonucci, Bernal, Bonner Boyd, Brophy, Brusati, Castle, Colletti, Deskins, Erickson, Feldman, Hart, Jamerson, Kabamba, Kalisch, Karni, Lawson, Malamud, Mann, Marcelo, Marshall, Masson, Mateo, Merchant, Murphy, Perfecto, Rahme, Rosenberg, Rosenthal, Schteingart, Sears, Sedman, Taghaboni, Vicinus, Walker, Winger, Wingrove, Wright, Zorn

Chair Kossoudji convened the meeting at 3:10 PM.

MATERIALS DISTRIBUTED

1. Senate Assembly Agenda for 22 November 1999
2. Draft minutes of 25 October 1999
3. SACUA Nominating Committee list of eligible candidates
4. Items for Information (3) dated 22 November 1999
5. Item for Action dated 22 November 1999
6. Report of the Rules Committee on the representation of currently unrepresented groups on the University of Michigan Senate Assembly, dated 14 April 1999
7. Draft revision to Regents Bylaw Section 5.01 dated 27 October 1999
8. Draft revision to Regents Bylaw Section 5.23 dated 11 October 1999
9. Proposed Regents Bylaw Section 5.24, dated 29 October 1999
10. Democracy and Authority Part 2. How Executive Committees Function in the Schools and Colleges of the University of Michigan - Ann Arbor, dated October 1998

VISIT BY VICE PRESIDENT AND GENERAL COUNSEL MARVIN KRISLOV

Chair Kossoudji introduced the vice president at 3:10 P.M. Vice president and general counsel Marvin Krislov discussed four topics: 1) commercial note-taking at the U-M, 2) privacy issues regarding e-mail, 3) electronic surveillance, and 4) a recent Michigan Supreme Court Case, the "Federated Case" (Federated Publications, Inc v. Board of Trustees of Michigan State University, 594 N.W. 2d 491, 460 Mich. 75, 135 Ed. Law Rep. 242 (1999)). Krislov said that there is no policy regarding note-taking, but that his office is trying to formulate a committee to study the issue in concert with the Provost, and that faculty opinions are sought. Krislov said that e-mail is inspected only if there are serious infractions suspected; he referred Senate Assembly to the Information Technology Division and its director, J. M. Griffiths, for any further details. Krislov said that hidden surveillance is used, and that most uses involve criminal activity, stalking, or computer and phone misuse. He said that some uses involve personnel investigations.

Vice president Krislov pointed out that in a recent opinion, the Michigan Supreme Court has recognized the constitutional autonomy of the U-M and MSU. He characterized the relationship as being almost like a fourth arm of government. He stated that there were important implications of the court decree for matters including open meetings, FOIA, and other actions taken by the state legislature. Professor Ward commented that the note-taking subject dealt with fundamental questions about intellectual property. Krislov expressed agreement, but stated that legal rights were a gray area. He said that copyright law requires proof that the ideas were fixed and not extemporaneous remarks. He said that if the note-takers engage in analysis or do not provide verbatim copies of the lectures, there would be a legal question. He said that to establish infringement would be difficult, but not impossible.

Professor Navvab inquired if copyright protection would be better hypothetically if faculty presented their lectures in videotape replay rather than in person. Krislov replied that he did not know, but that it might be possible to thwart educational goals in an effort to protect copyrights. An Assembly member asked whether the U-M had clear policy about ownership of intellectual property by faculty themselves rather than by the Regents. Krislov replied that policy is not clear on who owns the material. He said he could not say whether the U-M would claim institutional ownership if a faculty member wanted to sell their lecture material to another university.

Professor MacAdam said that the emerging issue of electronic course notes is similar to that of course packs. She said that the development of course packs in the commercial and private sectors has led to significant costs to students. She suggested that thoughtful policy at this stage could result in benefit to students. An Assembly member asked whether there were any legal points to consider if a faculty member wished to incorporate web-based notes from another university as part of their own background course materials. Krislov replied that under copyright analysis, a visit to a web-site is like going to a library.

Related to the Michigan Supreme Court decision, Professor Kleinsmith asked if it was possible at present for tenure candidates to obtain copies of external review letters under the Freedom of Information Act. Krislov replied that a candidate's own materials are

available under the Bullard-Plawecki Act, although external letters are "scrambled" to protect the identity of the author. Chair Kossoudji remarked that FOIA is a blessing and that the university should resist steps away from it. Professor Ward commented that he saw an analogy with the need for confidentiality in reviews of scientific papers for journal publication. He said that otherwise there would be severe retaliations against authors of critical reviews at time of grant proposal reviews.

Professor Gobetti asked the vice president to report on the status of the Affirmative Action lawsuits. Krislov replied that admission of intervenors by the Court has delayed the timing of events. He said that summary judgment motions are scheduled for Spring 2000, and the trials for a few months later. He said that the trials will occur in Detroit and will be trials by judge.

The guest left the meeting at 3:51 P.M.

#### CONSIDERATION OF THE MINUTES OF 25 OCTOBER 1999

The minutes of 25 October 1999 were approved with one correction to the attendance list.

#### ANNOUNCEMENTS

1. A SACUA Nominating Committee will be constituted from the list of eligible candidates (item 3). Any eligible members who wish to withdraw should inform the Faculty Senate Office.
2. The Senate Assembly is obligated by Regental Bylaws to name advisory committees for each vice president. A mechanism is required to provide advisory committees to the new vice presidents resulting from split of the Office of University Relations into three offices. Senate Assembly members are urged to inspect different possible models for meeting the obligations (item 4). The issue will be taken up for vote at the next meeting.

#### ACTION OF THE SENATE ASSEMBLY 991122-1.

Professor Ward moved, and Gobetti seconded, the resolution in item 5:

WHEREAS, Senate Assembly has delegated to its standing committee, the Academic Affairs Advisory Committee (AAAC), the responsibility of administering the Senate Assembly sanctioned evaluations of the University's deans; and WHEREAS, AAAC has asked for modifications to the Senate Assembly approved evaluation process; THEREFORE, Senate Assembly resolves to direct AAAC:

1) To eliminate seven items on the standard survey form that failed to elicit sufficient responses (25 - 50 % of respondents left them blank or indicated they had no basis to judge):

# 2 "The Dean productively utilizes the executive committee to operate the unit"

# 9 "The Dean uses adequate funding to retain key faculty, when appropriate"

# 18 "The Dean encourages the use of established grievance procedures"

# 25 "The Dean adequately represents faculty viewpoints to University administration"

# 28 "The Dean considers the advice of senior faculty in selecting a new Chairperson for a department"

# 29 "The executive committee gives significant input to the Dean during the preparation of the school's budget and during allocation of resources"

# 30 "The Dean is effective in presenting the school's budget to the University budget committee";

2) To make editorial revisions in three items to improve clarity by changing the terminology "is open to" in two items to "considers," and changing the terminology "appropriately weighs" to "considers" in one item; and

3) To modify the evaluation schedule so as to conduct an evaluation in the third year of any of a dean's five-year terms.

Chair Kossoudji immediately called the question to a vote. She declared that approval had been almost unanimous.

#### REPORT FROM RULES COMMITTEE CHAIR RONALD LOMAX

Chair Kossoudji introduced Professor Lomax at 3:58 P.M. Professor Lomax reviewed the findings of his committee in response to a charge from SACUA which asked for an assessment of the effects on Senate Assembly of extending membership to untenured ranks such as lecturers and clinical faculty (item 6). He pointed out that the Rules Committee recommends a longitudinal study of hiring trends in the non-tenure track ranks before any action. He explained that trends will possibly lead to domination of the Senate Assembly by the Medical School, and secondarily by LSA, at the expense of relative representation by all other units.

Chair Kossoudji stated that the issue was being discussed now because SACUA analysis indicated that within 5 or 10 years the tenure track will be a minority of all faculty at the U-M. She said that no immediate decision was needed, but she encouraged faculty to communicate their opinions to the Rules Committee.

A member of the Assembly from the School of Nursing stated that in her unit, 46% of the staff are in ranks that are not presently represented on the Senate Assembly. She declared that the clinical staff receive second class treatment within the unit, with various examples. She said that she felt strongly that they should be represented on the Senate Assembly, and that it would be good to increase the size of the Assembly. Professor Lomax replied that owing to the apportionment rules, an increase in the size of the Assembly will increase the representation of LSA and Medicine with little or no increase by other units. He pointed out that the staff could be given governing rights within the

School itself as an alternative to changes in the Senate Assembly structure. Professor Lomax concluded his report at 4:15 P.M.

#### DRAFT REGENTAL BYLAWS

Chair Kossoudji called attention to items 7, 8, and 9. She said that the draft proposals to change the Regents Bylaws regarding clinical faculty and research scientists are still subject to revision based on feedback. She invited the Assembly members to study the proposals and to send comments to the Faculty Senate Office. Professor Lomax pointed out that two paragraphs were missing from the current text of Bylaw Sec. 5.01. Lomax referred Assembly members to the Bylaws on-line at [www.umich.edu/~regents/](http://www.umich.edu/~regents/).

Professor Bartlett inquired why there was a need to change the status quo. Chair Kossoudji replied that she believed the provost would say that this is an effort to generalize the non tenure track appointments.

#### EXECUTIVE COMMITTEE ELECTIONS

Chair Kossoudji called attention to item 10. She explained that SACUA was trying to make elections for executive committees transparent and open. She said that Provost Cantor had informed SACUA that most election results are observed, but that occasional changes from voter preferences are made for programmatic reasons. Kossoudji pointed out that election results are fully disclosed in only one unit at present. She encouraged Senate Assembly members to ask their colleagues if they wish to have disclosure of election results in their units.

The meeting adjourned at 4:25 P.M.

Respectfully submitted,

John T. Lehman Senate Secretary