

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting of 14 December 1987

ATTENDANCE

Present: Singer, Barthlomew, Berent,  
Alpern, Birdsall, Blane,  
Borcherts, Borer, Brewer,  
Checkoway, Chudacoff, Comninou,  
Craig, Davis, Lady, DeCamp,  
Dobbins, Dressman, Durrance,  
Floyd, Gage, Allier, Gray,  
Haefner, Brooks, Hinton,  
Hollingsworth, Hook, Hudson,  
Hutchinson, Robinson, Kirking,  
Lavoie, Lenaghan, Lomax, Lougee,  
Margolis, Manis, Leonard,  
McClamroch, McLaughlin, Meyer,  
Miller, Moerman, Moore, Mosher,  
Ness, Oleinick, Olson, Pierce,  
Reed, Strang, Warner,  
Whitehouse, Winn, Wrobleski,  
Crichton

Absent: Baird, Bissell, Burdi, Carnahan,  
Dandekar, Diana, Edwards,  
Eggertsen, Inglehart, Kelsey,  
Meyerhoff, Moran, Muirhead,  
Olsen, Owens, Rosenthal, Ross,  
Sargous, Scodel, Seligman,  
Tentler, Turner, Weiler,  
Wiseman, Wulff

Professor N. Harris McClamroch convened the meeting at  
3:24 p.m.

MINUTES

The minutes of 16 November were approved as written.

MATTERS ARISING

Professor McClamroch invited comments or questions on the SACUA minutes distributed with the agenda. There were none. He then brought several matters to the attention of the Assembly. (1) SACUA has made a concerted effort to force Administration action on several CESF proposals, with the following results. (i) A joint Faculty-Administration Committee has been formed to make specific recommendations based on the Health Care Cost Committee report; most of its members served on the Health Care

Cost committee. (ii) The Executive Officers have approved the proposal to incorporate a socially responsible fund, the Calvert Fund, as an option for Supplemental Retirement Annuities; the program will begin in 1988. (iii) No action has yet been taken on special annuity supplementation for faculty members who retired between 1956 and 1966, but SACUA expects that the Executive Officers will consider the proposal in the near future. (iv) The proposal to expand the regular retirement program, beyond TIAA-CREF, to include Fidelity or Calvert Funds as options, has been approved in principle by the Executive Officers both for the faculty members' 5% and the University's 10% contribution; details are to be worked out by CESF and the Administration. (v) The Administration has moved slowly on its preliminary study of the merits of a cafeteria benefits program; SACUA will continue to urge that progress be made with this study. (2) SACUA has maintained contact with the Faculty Committee on the Presidential Search and has been informed that the Committee is satisfied with its involvement with the Board of Regents and that the process is proceeding slowly but surely. (3) SACUA has had an interest in the provision of legal representation for faculty members. This issue is especially timely because, in a widely reported current case involving a faculty member, a staff member, and a student, the University has decided to provide representation to one of the parties. John Ketelhut, Acting General Counsel, and Virginia Nordby, Director of the Affirmative Action Office, were invited to present the Administration's position at today's meeting, but deemed it inappropriate until after the Board of Regents has met later in the week. SACUA will re-invite them to the January meeting if it seems appropriate in the light of further developments.

#### ANNOUNCEMENTS

An all-University farewell reception for Harold and Vivian Shapiro is scheduled for Tuesday, 15 December, 3:00-4:30 p.m. in the Michigan League. It is hosted by the Alumni Association, the Michigan Student Assembly, SACUA, and the Board of Regents.

#### REPORT ON THE NEW UNIVERSITY TRAVEL POLICY, JERRY MILLER, CHAIR, FINANCIAL AFFAIRS COMMITTEE

Professor Miller outlined the background of the new policy. Last year, a more central policy involving designated travel agencies was introduced on a volunteer basis. Approximately eight Ann Arbor, Flint, and Dearborn agencies submitted bids that met the criteria, and became part of the system. Two have since been eliminated, having provided no services under the program. Benefits to travelers included a free American Express card and a special telephone number in each agency, to be used only for University business and staffed by persons experienced in University travel. The main advantage to the University was information about aggregated travel used by faculty and staff, which could be used in negotiating reduced rates. In the second (current) year, many arrangements were made mandatory, e.g., use

of a designated agency. The information went out to Deans, Directors, and Department Heads in early September, the new rules being effective from 1 September. In some cases no further notice was given the faculty, while in some others the information was passed on in letters that were even sharper than the original one. Rebellion ensued.

The Financial Affairs Committee had good discussions with Vice President Brinkerhoff and others, resulting in some changes. (1) The requirement of a maximum of \$25.00 for a meal and receipts for all meals is impossible to fulfill in some cases. It is now explicit that the rule of reasonableness applies: if unable to comply, submit the claim with an explanation. (2) The effective date has been changed to 1 January 1988. (3) The basic requirement to use a designated agency was not changed, but if there are reasonable grounds for other arrangements one can notify the Travel Office in advance. Mere preference will not be considered an adequate reason. Travel agencies are required to check once a week if there are lower cost options; travelers must be informed, but are not obligated to change their plans. It appears that these policies have resulted in savings for the University.

The report was followed by extensive faculty comment. Professor Brewer strongly protested the term "mandatory." Professor Comninou added that perhaps we would soon be told what to wear. She was also concerned about discrimination against small businesses. Professor Berent said that he knew of cases where such requirements in other systems had resulted in people being told by a stipulated agency, for instance, how soon after a meeting they must leave. He himself experienced this, though not in connection with the University system. He objected that this takes you out of the free enterprise system. You cannot, for instance, call United Airlines directly. Professor Meyer agreed that this was one of the greatest losses. In his lab, there had been cases where savings resulted from direct arrangements, especially in foreign travel. Professor Alpern wondered whether the decision on the selection of agencies was sensitive to the possibility of corruption. Professor Blane asked if we would be notified before 1 January what the six agencies are. Professor Hook wondered if we could take advantage of a special rate offered for an annual meeting. Professor Ness found it disturbing that most travel is done under funds generated by the faculty, and that the Administration has made a decision without good faculty input. In the course of the discussion, Professor Miller responded to some of these concerns. Any agency with computer capacity can apparently meet the reporting requirement, and any agency that can meet the requirement can be designated. In cases where savings can be realized by not using a designated agency, the University is willing to make exceptions. Professor McClamroch thanked Professor Miller and said that we would continue to watch this matter.

ELECTION RESULTS

Professor McClamroch announced the results of the SACUA Nominating Committee election, and asked those elected to stand: Alphonse Burdi (Medicine), Barry Checkoway (Social Work), James L. Miller, Jr. (Education), N. Harris McClamroch (Engineering), Daniel Moerman (Anthropology, UM-Dearborn), Leslie Olsen, (Engineering).

"INTELLECTUAL FREEDOM AND PROTECTION AGAINST HARASSMENT," LEE BOLLINGER, DEAN, LAW SCHOOL; SALLYANNE PAYTON, PROFESSOR OF LAW; PETER RAILTON, CHAIR, CIVIL LIBERTIES BOARD

Professor McClamroch said that this agenda item had been planned for discussion, not for the development of a resolution. He then introduced Professor Railton, who briefly outlined the topic and introduced the two keynote speakers. He suggested three questions that are relevant to the possible collision between concern with racism/sexism and protection of free speech. Which forms of speech are legally or constitutionally protected? Which forms of speech should we be prepared to tolerate even if they are not so protected? What stance should the University take to express its values?

Professor Bollinger addressed the topic in the light of the First Amendment, especially as interpreted by the Supreme Court. Racist speech outside of the classroom is probably protected, but the Court has taken very few cases involving campus-type speech. There are some paradoxes. You can regulate broadcasting as you cannot regulate newspapers. You can stop indecent but not racist speech, the Skokie case being a prime example of protected speech in a non-campus situation. Some cases say you cannot severely discipline, e.g., dismiss a student for using indecent language in a student newspaper. What about the classroom? We should be able to control speech that disrupts learning. What about the campus outside the classroom? It is a learning environment, but also a community. One case says you can regulate indecent speech on radio and TV. It is assumed racist speech would be treated as in the public area; the direction is toward protection. From the constitutional point of view, protection of offensive speech depends on (1) the nature of the penalty, (2) indecent vs. racist speech, and (3) where it occurs. One could argue, on the other hand, that the University is different, a place committed to learning and to rationality. Racist speech is not rational. We have an interest in civility. The harm done by racist/sexist speech can equal that of an act, which is not protected. After citing several standard arguments for protecting extremist speech, Professor Bollinger concluded that in his own view it is a healthy thing to be tolerant even of bad behavior, but that in a university context he is strongly attracted to the civility argument.

Professor Payton prefaced her comments with the remark that there are different kinds of lawyers, and that she is an institutional as opposed to a constitutional lawyer. She assumed we would all agree that we do not like what is going on on campus. She had served on the committee reviewing the incident of racist jokes on WJJX. The station was found to be simply badly managed. Well-managed stations inform their personnel of broadcast standards of decorum. One does not expect to hear racist remarks on WUOM or WCBN. This incident was only one of a group of racist incidents. Representative Hood's hearings flushed out a good deal of detail about the large problem that exists on our campus. Those acting out the most are "the kids," eighteen-year-olds acting like fourteen-year-olds. Today's students grew up in the post-Civil Rights era, and know little about slavery or segregation. The people who count on campus are nearly all white, and most of those who count the most are male. This situation sends out signals as to who has support and who is marginal. There is a potential legal problem. The University is bound by Title VII of the Civil Rights Act to provide a workplace free of harassment. Title VI requires that students be afforded equal opportunity. There is enough evidence to justify a case on this point, though there has not been actual litigation. How do we reduce such abuses as racist slogans on a wall or racist signs on an employees' bulletin board to the point where the University is not vulnerable under Title VII? Professor Payton said that she personally preferred that we approach the problem as one of administration rather than of discipline. When people understand what is wrong, they tend to avoid it. The University should educate its students. However, it does need the right to separate those whose behavior is extremely flagrant.

Professor McClamroch thanked both speakers and invited comments or questions, first from Assembly members and subsequently from visitors. Professor Winn asked if it would help to have matriculants sign a pledge to respect diversity. Professor Payton thought such a measure would be appropriate; isolated acts of pure speech violating such a pledge would not justify expulsion, but an aggravated course of conduct would. Professor Bollinger said that the legal position of the University would not be enhanced. He also felt that, while it is very important that the institution find ways to indicate that racist behavior is unacceptable, the symbolism of a pledge is bothersome and suggests an oath of allegiance. Professor Ness commented that it is excellent to have this discussion, but expressed puzzlement that we have so much racist behavior now compared to twenty-three years ago, when the "white male" image was much stronger. Professor Payton replied that attitudes were indeed different when integration was new. Professor Stella Robinson, substituting for Professor Ketefian, noted that the younger faculty had also come through the education system since the Civil Rights movement.

Jonathan Rose, a lawyer representing two individuals involved in the WJJX incident, expressed strong concern about any tendency to be soft on the First Amendment, saying that he personally would not want to be called racist Jewish names but would much prefer this to infringements on the First Amendment. Mike Phillips, Chair of the MSA Student Rights Committee, objected to being called a kid, noting that eighteen-year-olds have the right to vote, and that today's students know about the Civil Rights movement through books and lectures. He said that WJJX had made a turnover in response to public outcry. He felt that institutionalized racism was more damaging than individual attacks, citing as examples that Black student enrollment is down and that the University recruits at only two Black high schools in Michigan.

Professor Lenaghan asked what sanctions other than separation might be available. Professor Payton replied that, as a technical matter, the courts may draw a line between interruption and non-interruption of student status. Education is the least punitive approach, for instance putting something in a student's file. Professor Ness noted that rules exist regarding punishment for academic offenses. Commenting that the discussion had been very valuable, Professor McClamroch then asked for Old Business or New Business.

#### OLD BUSINESS

Professor Reed called attention to the continuing search for a Senate Secretary.

#### ADJOURNMENT

There being no New Business, the meeting adjourned at 5:17 p.m.

Respectfully submitted,

Mary C. Crichton  
Senate Secretary, pro tem