

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting, December 18, 1978

ATTENDANCE

Present: Angus, Aupperle, Barnett, Baumgarten, Berg, M. Brown, Browne, Scearse, Cox, Cooper, Corpron, Crichton, Dabich, Downen, Eckert, Elving, Flerner, Fowler, Gay, Friedman, George, Gordon, Rush, Hinerman, Hungerman, Lyon, Leary, Lindberg, Livermore, Simms, Merte, Naylor, Gabrielson, Parkinson, Portman, Rabkin, Romani, Simonds, Burckhalter, Schulze, Tilly, Tonsor, Trojan, Grassmuck, Verhey, White, Winans.

Absent: McClendon, Brazer, D. Brown, Cohen, Coon, Diamond, Dingle, Edwards, Fekety, Gull, Harris, Herbert, Jones, Koran, Morley, Nisbett, Penner, Porter, Powers, Poznanski, Rowe, Abdel-Massih, Vasse, Zorn.

Guests: Professor Harold Johnson, Chairman, Faculty Committee on the Presidency; Professor James Duderstadt, Chairman, Academic Affairs Committee; Professor Milton Heumann, Chairman, Civil Liberties Board.

MINUTES

The Minutes of November 20 were accepted as written.

ANNOUNCEMENTS

1. Uncorrected SACUA Minutes for November 27 were mistakenly distributed to Assembly members. Corrected Minutes will be distributed next month.

2. The Jones proposal on the University Calendar favored last month by the Assembly, has been discussed with Vice President Shapiro, who will make a decision after consultation with other groups.

THE FACULTY
ADVISORY COM-
MITTEE ON THE
PRESIDENCY

Professor Harold Johnson, Chairman of the Committee, took the podium for his monthly report. Three weeks ago, he said, the Committee finished a ten-page statement on the needs of the University and submitted it to the Regents. The statement will be distributed to the Assembly with the call to the January meeting. The Committee is now developing criteria for the judging of candidates. Professor Johnson announced that the Committee has begun actively to seek nominations. He encouraged everyone to send nominations, along with curriculum vitae and supporting remarks, directly to the Committee.

Professor Romani, a member of the Committee, added that there was a special need that faculty from many

disciplines send nominations so that as many good candidates as possible be considered.

In the brief question period, Professor Naylor asked if communication between the presidential advisory committee and the Regents was good. Professor Johnson replied that it had been very satisfactory. Professor Elving asked if the Regents had set up a time-table. Professor Johnson did not know of one. He said that he would not like to commit the committee to a strict schedule, but that he hoped that the selection process might be completed by late Spring.

NOMINATIONS AND APPOINTMENTS

Assembly approved the nomination of Beth G. Reed, Assistant Professor of Social Work to an eight-month term on the Committee on the Economic Status of the Faculty, completing the term of Katharine Warner, on sabbatical leave.

PROGRAM DISCONTINUANCE REPORT AND PROPOSAL

Professor Livermore summarized the recent history of amendments to the Program Discontinuance policy accepted by the Regents in 1977. The amendments approved by the Assembly in June, 1978, had been discussed with Vice-President Shapiro and (as Professor Lindberg reminded us) with President Fleming, who felt they were flawed, and declined to carry them forward to the Regents. SACUA returned the matter to the Committee on Academic Affairs, and the new proposal emanates from that Committee.

He introduced Professor James Duderstadt, Chairman of the Committee. Professor Duderstadt described the proposal and he explained three issues. First, he said that the Committee has learned from the University attorneys that the Program Discontinuance policy adopted by the Regents has the effect of a By-Law. Second, he pointed out that the powers vested in Deans and Executive Committees by the policy derive from the budgetary and hiring powers delegated to those officers in the By-Laws. Third, he explained that the need to amend the policy lies in the area of program transference, which is not covered in the 1977 document.

Professor Cooper, author of the amendments passed by the Assembly in June, opened the debate. He spoke in opposition to the new proposal on the same grounds he had cited in June. He said that the 1977 document usurps the authority of governing faculty, specifically the authority to dispose of curricular matters, of which academic programs are a conspicuous example. Professor Cooper then read from the Regents By-Laws - the Preface, and Sections 5.01(3), 5.02, 5.03, 5.05, and 5.06 -- refreshing the Assembly's awareness of the Regentally legislated role of the governing faculty within the University. He questioned the right of any subordinate University legislative element in presuming the authority to generate and implement pro-

cedural documents that are in direct contravention of existing Regental By-Laws, By-Laws which may only be modified by direct action of the Board of Regents, through the formal amendment process predescribed in Chapter XIV Sec. 14.03 of the Regents By-Laws.

Professor M. Brown asked if the Regents can modify their own rules by majority vote? Professor Livermore replied that when the Regents approved the Program Discontinuance policy they were interpreting their own By-Laws.

Professor Cooper then briefly defended his own counter-interpretation.

Professor Elving said that the Program Discontinuance policy represented but another example of the attrition of faculty governance in the University, the increasing centralization of power. Here the issues are educational policy and scholarship, which are vital to the faculty, and in which the faculty must exercise major responsibility. He supported the June action of the Assembly.

Professor Duderstadt noted that his Committee's proposal introduces language different from the original document. It specifies that Executive Committees or other elected bodies must share with the Deans in the initiation of any program discontinuance or transference. He added that the major argument against the June amendments is that the policy as a whole would become unworkable if faculty approval is necessary.

Professor Elving responded that unworkable or not the faculty's desire to govern the curriculum may still be worth calling to the Regent's attention.

Professor Duderstadt replied that if faculty approval were required, the procedures would be so cumbersome that they would never be used.

Professor Berg asked if the University attorneys had reviewed the Program Discontinuance document so that it may be thought to be consistent with the Regents By-Laws. Professor Livermore answered affirmatively.

Professor Gordon questioned the unworkability of the policy under the conditions of faculty approval. Most programs, he said, that have been discontinued, have been discontinued by the faculty. Furthermore, he suggested the alternative to the program discontinuance procedures would probably be a budgetary procedure, in which the decision on how to manage cuts in the budget would be made by units and departments themselves.

Professor Friedman went on to underscore Professor Elving's point about the attrition of faculty power and responsibility. In the Medical School, he said, the one area where the faculty still holds major responsibility is the curriculum. He said he would oppose the proposal.

Professor Duderstadt said that the proposal tries to bridge both curricular and budgetary responsibility.

Professor Naylor observed that curriculum and budget are regularly connected, and the argument cuts both ways. He would continue to support the Cooper amendments.

Professor Livermore clarified again the fact that the original document, flawed as it is, is in place in the University, has no chance of being changed without administrative support, and contains no language on the important issue of the transference of programs.

Professor Elving thought that it was important that the Regents hear the faculty's voice. He thought that the recent discussion between the Regents and CESF illustrated how little the Regents hear of and from the faculty.

Professor Duderstadt reiterated that the proposal tries to retain the spirit of the June amendments while accommodating them to the fact of their literal unacceptability.

Professor Romani asked for clarification of the Academic Affairs proposal. Would it receive approval from the Administration? Duderstadt replied affirmatively.

Professor Grassmuck then called attention to what he took to be another important omission in the original document. It says nothing about the introduction of programs, yet, introduction of new programs can often mean the discontinuance of old ones. Budgetary stringency seems to call precisely for this kind of trade-off. In his experience the introduction of programs has never been brought to the faculty for approval. He said he believed the faculty should exercise control over both ends of the process.

Professor Livermore agreed that the Program Discontinuance document is silent about program introduction -- probably because no jobs are at stake, or perceived to be at stake, in the latter.

Professor Tonsor said that the logic of the remarks of Professor Cooper and Professor Grassmuck points un-

deniably to total faculty control of the programs of the University, which is an administrative impossibility. It is absurd, he said, to believe that faculty will vote themselves out of a job.

Professor Cooper then said he wished to make three more comments. First, he pointed out that the proposal assumes what is not the case -- that Executive Committees are elected bodies. On the contrary, they are appointed, and are designed to assist the Deans rather than represent the faculty. Second, he acknowledged that discontinuance for financial reasons is perfectly legal, and need not require faculty approval. Third, he said that in thirty-three years on the faculty he had observed two major consistencies: the fallibility of Deans, and the ability of the faculty to rise above its parochial interests when necessary.

Professor Angus asked, how the Assembly can make representation to the Regents in support of its June action?

Professor Livermore replied that we need only ask for time at an upcoming Regents meeting. Professor Friedman emphasized the point that we have direct access to the Regents despite negative recommendations by the administration.

Professor Elving then suggested that we consider strategy and tactics. Let us go, he said, to the Regents with the June Assembly action, and use the Academic Affairs proposal as a fall-back.

Professor Livermore called for a vote on the proposal of the Committee on Academic Affairs. It was defeated 33-8.

A resolution was formulated: the Assembly instructs SACUA to carry the amendments to the Program Discontinuance Guidelines that were passed by the Assembly last June to the Regents with supportive arguments based on today's discussion, and report back to the Assembly. The resolution was amended to include the phrase "after consultation with Vice President Shapiro" to follow the clause "The Assembly instructs SACUA".

Professor Grassmuck reiterated his concern about program introduction. Several members of the Assembly spoke to the effect that the issue was too complicated to act on now.

Professor Livermore asked Professor Duderstadt to bring the matter of program introduction before the Academic Affairs Committee and Duderstadt agreed.

Professor Livermore then called for a vote on the resolution. It passed 35-5.

POLICY STATE-
MENT ON INTEL-
IGENCE AGENCY
RECRUITMENT

Professor Livermore introduced Professor Milton Heumann, Chairman of the Civil Liberties Board.

Professor Heumann described briefly the context of the Board's draft, which had been revised in the light of previous Assembly debate. He noted that the issue is controversial and much written about in the last year. The CLB has followed closely the continuing public debate between Harvard and the CIA. He pointed out that the statement is not written from a point of view hostile to intelligence agencies. It attempts only to structure the relationship between such agencies and the University community. He added that our situation has been more tractable than Harvard's because Michigan already has useful guidelines on research and outside employment.

He then turned to the statement's four specific resolutions. The first, concerning the obtaining of involuntary services, is not exclusively aimed at intelligence agencies. The second parallels the Harvard guidelines, and is a matter of professional ethics. The third is specific to intelligence agencies and reflects the way they differ from other groups. The fourth, again, is simply a matter of professional ethics.

Professor Rabkin opened the debate by opposing the whole statement as an infringement on his civil liberties. He said he found it impossible to make a number of the distinctions assumed in the statement -- as between his official role and his **general professional** role (i.e. when he is not acting as a professor at this University) or between giving misleading information and playing the devil's advocate in class. He criticized the restriction expressed in the document on the freedom of research, and thought it was unworkable. He said he thought it pernicious to protect the rights of students by abrogating our own civil liberties.

In response, Professor Heumann said that he saw no way to couch three of the four resolutions in terms of civil liberties. They are matters of professional ethics. No. 3 he conceded was being heartily contested by Admiral Turner of the CIA in terms of the right of privacy.

Professor Rabkin reiterated his concern for the chipping away of civil liberties. He said that our professional ethics are uncodified because, unlike doctors and lawyers, we are granted no special privilege before the law. The criminal code is for him a sufficient abridgement of personal freedom.

Professor Browne said he opposed the document on different grounds. He simply thought it vacuous.

Professor White asked what the status of the document would be if the Assembly passed it. Professor Livermore replied that it would become a recommendation from the faculty for Regental action.

Professor Gordon said he does not think civil liberties are at stake at all. Professional ethics are. He said he thought the resolution not to give names without express prior consent a matter of common courtesy.

Professor Baumgarten asked if the first two resolutions were actionable. The question was left unresolved.

Professor Elving said that each item seems to him unworkable. Unless we wish to chastize the CIA, there seems to be no point to the document. We have a code, he claimed -- academic behavior.

Professor Livermore replied that there is no explicit code of academic behavior.

Professor Tonsor recalled his argument of a few months ago that the academy and intelligence agencies are mutually exclusive. There ought to be a simple rule, he thought, preventing someone from participating in both.

Professor Naylor suggested that professional codes usually command the allegiance of the vast majority of the members of those professions. This document, he felt, was plainly controversial. Can we, he asked, make a code by a vote of 51%?

Professor Livermore asked for comments from those members who would defend the behavior prescribed in the CLB resolutions.

Professor Merte did not comply with the request. Instead, he said he found the prohibition against lying (item #2) offensive in every way. It goes without saying, he thought.

Professor Rabkin objected to Livermore's request for a defense. It assumes that those against, for example, the prohibition against lying are asserting the right to be untruthful, which is not the case. He then enumerated his objections against each of the resolutions.

Professor Cooper asked what the motive was for the document in the first place.

Professor Heumann replied that interest emanated from SACUA and the Administration, who had been asked to consider the issues by the Select Committee of the Congress upon their investigation of the domestic activities of the CIA.

Professor Friedman then cited what he took to be ambiguity and awkwardness in the text of the resolutions, and Professor Gordon said that the great concern was that the CIA might be subverting the academic enterprise.

Professor Livermore said that he had heard little support for the statement as written. He asked for a vote on whether or not the Assembly wanted to have a perfected document on the issue produced. The tally was Yes -- 13 and No -- 21. In the absence of Assembly support for the idea of a policy on intelligence agencies, discussion was closed.

Because of the lateness of the hour Professor Livermore suggested moving the rest of the agenda to the January meeting. Assembly agreed.

Professor Elving asked a final question. Given the disruptive demonstration yesterday (December 17) in the Rackham amphitheater, he wanted to know what the procedures were for quelling disruption. Professor Livermore outlined the procedure: The meeting chairman must decide when uncontrollable disruption has occurred. He then notifies the President, who decides whether or not to call in the police.

ADJOURNMENT

The Assembly adjourned at 5:25 p.m.