

**To:** SACUA

**From:** Rogério M. Pinto, Chair, General Counsel's Advisory Committee

**Subject:** Report on Activities of General Counsel's Advisory Committee for AY 22-23

**Members:** Rogério M. Pinto, Janet Biermann, Lorraine Buis, Steven Chinn, Colleen Conway, Adam Matzger, Seth Quidachay-Swan, Pamela J. Smock, Jamie Tappenden, Lori Tschirhart, Judith Walker, Silke-Maria Weineck, Sophia Boettcher (Graduate Student), Jordan Orr (Undergraduate Student)

**SACUA Liaisons:** Rebekah Modrak, Kentaro Toyama

**Meeting Dates:** 10/21/22; 12/9/22; 2/3/23; 4/7/23

### **Committee Charge**

1. Free speech issues, legal protections.
2. Academic integrity in the virtual environment, protection of intellectual output.
3. The role and philosophy of the OGC, how it views input from faculty, and how it uses such input. Examples of implementation of input from faculty?
4. Steps taken to improve the climate on campus and, in particular, tackle sexual misconduct: <https://publicaffairs.vpcomm.umich.edu/sexual-misconductprevention/>. What might the University consider doing differently?
5. Based on the OGC's philosophy, how would it view the social, cultural, and monetary cost of sexual misconduct within the university environment?
6. Clarification/rationale for using external law firms to help with the legal work generated by the university.
7. Issues concerning background checks for staff and faculty. What are the differences between staff and faculty? History of how/when we started conducting background checks? How is background check used by the university?

### **Information Obtained**

The committee discussed issues of academic freedom. The difficulties presented by student challenges to course content were reviewed, as there are times when students object to subject matter that makes them uncomfortable. However, such content can be necessary if the subject matter is to be sufficiently covered and examined. Members reported that, due to concerns about student objections to course content, they have opted to teach less or to avoid subject matters entirely—thereby presenting a challenge to academic freedom and undermine the University's educational mission. A sense of students being quickly ready to report on faculty over course content creates an environment in which a faculty member can feel they need to teach defensively. This feeling can be amplified by the *Daily's*, at times, unbalanced reporting and by investigations that have been led by the U-M of faculty singled out by

students. Concerns were also raised regarding disparities involved in when and how students object to course content, depending on the myriad identities (e.g., gender) of the faculty member.

Various ways to help support academic freedom (including in the classroom) were considered. It was recommended that there should be more efforts by faculty to stand in solidarity to support efforts to teach content that students might find challenging. Moreover, there is also a need for administrative leaders to better support faculty facing such situations, rather than quickly taking the student's position. A suggestion was raised of having resources readily available for faculty to appropriately address these types of situations. Students too need to be educated more on what to expect in the classroom. The committee also discussed President Ono's interest in drafting an academic freedom statement to be included in the Regents' Bylaws. Other prior statements were considered, including the "Chicago Statement," U-M prior statements and SPGs, and U-M's heckling warning. However, due to a change in the current climate of education, a statement that addresses more effectively the challenges of the moment would be helpful.

The University's responses to legal conflicts were considered. In particular, its use of outside firms was discussed. The pros and cons of the practice were reviewed. This practice was seen as sometimes necessary to aid credibility of specific investigations. Consideration was also given to the University's internal responses to conflict, including alternatives to adversarial proceedings such as the ECRT's restorative justice approaches. Concerns were raised that faculty members can feel isolated while involved with adversarial conflict proceedings.

Background checks were discussed by the committee. The committee was visited by two experts in the hiring process at the University. Processes were reviewed, with distinctions made between faculty and staff. Drug screening policies were reviewed as was the requirement that U-M employees execute an oath in order to be hired.

Admissions criteria for acceptance to the University were also discussed. A recent Texas lawsuit in which a white student claims six Texas medical schools are illegally considering race and sex in admissions was the catalyst for this conversation. The lawsuit highlighted a point brought up that test scores should not be the primary factor in determining admission to the University. Alternative factors suggested included considering how a student would benefit from a U-M education, soft skills, and commitment to service. U-M is already subject to Prop 2 from the 2006 Michigan election, which bans consideration of race, sex, color, ethnicity, or national origin in admissions. As a result, the University is well-positioned for however that Texas case resolves, but legal efforts to challenge DEI efforts remains an ongoing concern.

The challenges of having candid conversations on the GCAC were also discussed, with difficulties involving what can be communicated beyond the committee as well as the format being considered. At the last meeting of the academic year, all of the attendees were present in person, and this was felt to add substantially to the quality of the conversation.

## **Recommendations**

The committee recommends the following:

- There needs to be continuing discussions and efforts related to making sure the administrations of colleges, schools, and departments are prepared to support faculty facing objections by students related to course content, rather than defaulting to



accepting the student's position. Moreover, administration responses to such objections should heavily involve the considerations of a faculty member's department peers who, due to their shared expertise in the subject matter, are better able to assess whether content might be objectionable. There should be some required threshold that should be met before student objections to course content are taken beyond a faculty member's class or that faculty member's department.

- There should be the creation of a toolkit of resources available to assist faculty for when the subject matter of their classes is challenged by students. This should be broadly disseminated and regularly updated.
- Students need better guidance regarding what to expect in the classroom and what constitutes objectionable material.
- SACUA should consider how to help support faculty demonstrations of solidarity with other faculty members teaching challenging course content.
- SACUA should provide feedback to President Ono regarding the content of a statement of academic freedom that could be incorporated into the Regents' Bylaws.
- The University should better extend and support restorative justice approaches to conflict rather than adversarial approaches that tend to leave individuals feeling isolated and defensive.
- Future GCAC would benefit from being primarily in person, whenever possible, due to the challenging dynamics of the content being discussed, which can be easier to manage in person.