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MINUTES OF THE MEETING OF THE FACULTY SENATE OF THE UNIVERSITY OF ARIZONA  
Monday, January 13, 1992 Room 146, College of Law

The Faculty Senate convened in regular session at 3:10 p.m. on Monday, January 13, 1992, in Room 146 of the College of Law. Forty-six members were present. Presiding Officer of the Faculty Senate Vivian L. Cox presided.

**SENATE MEMBERS PRESENT:** Aleamoni, Aquilano, Atwater, Badger, Barrett, Bickel, Bootman, Braden, Cole, Cox, Elliott, Enos, Ewbank, Garcia, Goetinck, Grabel, Hetrick, Hildebrand, Hyder, Impey, Joens, Jones, Kermes, Knight, Larson, LaSalle, Law, Lei, Mautner, McElroy, Mitchell, J. O'Brien, S. O'Brien, Pao Tao, Pacheco, Pitt, Reiter, Roemer, Saint-Germain, Silverman, Songer, Spera, Sugnet, Thomson, Tomizuka, Witte, and Zwolinski. Dr. Robert Sankey served as Parliamentarian.

**SENATE MEMBERS ABSENT:** Burkhart, Cork, Cusanovich, Dvorak, Ganapol, Ganguly, Rich, Salomon, Terrazas, Valenzuela, Vezino and Zukoski.

**OPEN SESSION:** Dr. Cox introduced Dr. Steve Jordan, Arizona Board of Regents Deputy Executive Director for Finance and Planning, who had been invited to provide an overview of budgetary issues.

Dr. Jordan: "The subject that we will talk about today is not a particularly fun one. As many of you may have heard, the Governor presented his State of the State Address and released his budget today. We must examine the difficult financial decisions we are going to have to make in our three universities over the course of the next several years. I'd like you to work through the particular problems we are facing in the current year, and then try to project out into the next four years what that might mean to us.

"The Governor's recommendation is only the beginning of what we consider a very long dialogue which probably will not be resolved until May or June of this year. We've categorized by components the universities' current year Legislative Request Budget expenditures: (1) those expenditures which are required or mandated, that we have no choice about and which we will have to make regardless of what we want to do in our universities; (2) those which are of high priority to us, that are extremely important in carrying out our academic mission; and (3) those which are awfully important to us with respect to achieving the goals set out in our strategic plans, the program enhancements, new program initiatives that we would like to make.

"In the area of required expenditures, there are four categories. First of all, the Board has already approved as part of its tuition package an increase in financial aid for students at the three universities as part of the tuition set-aside program; that increase in financial aid will cost \$1.2 million across the system, and for the UofA, it will add another \$564,000 in financial aid expenses. We are anticipating \$6.7 million worth of added debt service in the system next year, of which \$2.3 million will be at the University of Arizona. Those buildings are under construction and will open up during this next year. We will have to pay those expenses. Interestingly enough, as I understand the Governor's recommendation, his recommendations do not recognize any increase in debt service. Mandates are increases mandated by some other level of government, either by the courts, through a court order or a regulatory agency, like the approxi-

mately 15 percent increase for Tucson Electric being tacked on to this university, and mandated minimum wage increases. We anticipate we will have to pay for \$8.8 million in mandates, regardless of whether we wish to or not, of which \$5.5 million will affect this university. Finally, there is annualization of costs for programs begun during the current fiscal year, which will be partially funded this year, with the remaining funding coming in next year. We will have \$18.3 million, \$9.7 from UofA, in total mandated expenditures.

"In the category of high priority expenses, those things which we think are essential for us to achieve our mission and to have good academic programs, we have \$27.7 million worth of increases, number 1 being salary increases for our faculty and staff throughout the three universities, and this item exceeds even mandated increases. We started off with a program two years ago to bring the universities back to the 75th percentile of their peer institutions. Last year we had an increase of about 4 percent, as part of that package. This year we requested it again. We got nothing. We're asking for continuation of that program for next year: \$17.4 million for faculty and staff, of which \$7.9 million would be at this university. The cost of operating new facilities--utility costs, maintenance costs--will be \$4.6 million, of which approximately \$1 million of that will be at this campus. Enrollment growth: the cost of the 22:1 formula for students entering the system will add \$1.1 million system-wide, but at the University of Arizona and at Arizona State University, there will be a decrement taken, in this case \$1.6 million for the University of Arizona. That formula, 22:1, is applied when enrollments are going down as well as when they are going up, and unfortunately, our formula in Arizona does not provide a window of 1 or 2 percent, plus or minus, in which no change is made. And, finally, the cost equity study which was initiated several years ago among the three universities, in which Arizona State and Northern Arizona were compared to the University of Arizona by discipline and level, and a decision was made that the other two should be brought up. Two years of that have been funded. The current year should have been the last funding year but the Legislature at the last minute deleted it, so there is a request to fund it for the final year, and of course there is no increase there for the University of Arizona. High priority expenditures total \$27.6 million, \$7.2 for the University of Arizona. So you can see we've already got for the University \$16.9 million worth of requests.

"And finally, there are those other high priorities in decision packages, which we typically request, and which usually have some success in getting funded. We've requested \$14.4 million in other priorities which are basically restoration of cuts made in this and the prior year. As many of you know, operating expenses at all three universities were cut tremendously this year, so a lot of that request is to restore those operating expense cuts. \$15 million is the total for decision packages, program enhancements, new degree programs, of which \$5.3 million is requested for this university.

"We're looking at \$75 million system-wide, \$30 million for this campus, but we still haven't looked at ASU West Campus or at the College of Medicine. What do those other two major programs add in terms of potential expenses? For ASU West, because it's a developing campus, there is very little in the first two categories of required expenses or high priority expenses. They're principally in the area of decision packages, what it takes to stock the shelves to get that campus going. It totals \$10.3 million, and with those other residuals required in high priorities, there's a total \$11 million increase. The College of Medicine program, which is firmly in place, is more affected by the required and the high priority expenses, so they have \$4 million in those two categories, and an additional \$2.2 million in decision packages, for a total of \$6.3 million.

"Summarizing the requests across each of the categories system-wide, we have a request for \$93.2 million from the state, of which \$36.5 million is at the University of Arizona. What revenues might be available to fund that? Principally, we're talking about two revenue sources: the State General Fund and tuition revenues. As all of you know, the Board has already made a decision of no tuition increase. Our estimates at this point are that no increase in tuition will result in a decrease in revenues of approximately \$2.4 million system-wide, and that's principally driven by a change in enrollment mix between residents and non-residents. So that's the first thing in terms of a decline. So that means that to achieve any or all of these required expenses, it will all have to come out of the State General Fund.

"What is the likelihood of that? We have reviewed the three categories: the required expenses, the high-priority expenses, and the other priorities--the decision packages and other programs. What happens if we get a zero increase in General Funds and a zero increase in tuition? Even though we have \$20 million in mandated expenses, we have a negative \$2.4 million in revenues. We're \$22 million in the hole. If we were to be fortunate enough to get a 2.5 percent increase, we would be looking at still not funding just the mandated increases. You would have about \$15.4 million against \$20 million in mandated expenses. Our wildest expectations would say a 5 percent increase, which would be \$33 million, and that puts us half way into the other high priorities, those things that are important to us like faculty salaries. So right off the bat we're going to have to be making decisions, even if we got a 5 percent increase, about whether we would be able to fund faculty and staff salary increases versus other high priorities that we might have. A 7.5 percent increase would just barely bring you up to funding the first few highest priorities, so we wouldn't even get into the notion of funding any enhancements to the academic programs. Let's look at the same picture for just the University of Arizona. The University of Arizona will have actually most of that \$2.4 million lost in tuition revenue against a mandated increase of about \$11 million. Even if you got a 7.5 percent increase, it would give you \$21.4 million. That would barely fund the first two categories for you.

"Now let's look at the historical picture. Your debt service, your local fund budget, your auxiliary enterprises, your academic program expenses and everything else have been going up. If we are to limit revenues over a period of four years, from fiscal year 1992 to fiscal year 1996, the gap in revenues between anticipated expenditures and actual revenues is about \$40 million in a four-year period. You would have a cumulative deficit in this university of \$40 million. If there was a zero increase for a period of four years, and certainly the likelihood of a zero increase for at least one of those years is sitting there as a highlight, given the Governor's recommendation today, which is for a zero increase for higher education system-wide, without going into the specifics of how that might be distributed among the three campuses. You can then begin seeing that the gap over the four-year period goes from \$40 million to almost \$100 million, in the neighborhood of \$90 million, as a cumulative gap.

"What would happen if you were to experience a decline of 2.5 percent over a period of time? The cumulative gap in that case goes from about \$660 million to \$890 million, so you're sitting there with a \$130 million cumulative gap over three years. Now, what is the likelihood of 2.5 percent reduction? As I said, the Governor's recommendation at this point was for a zero increase system-wide, but he made some assumptions in putting that together. I've not had an opportunity to look in detail at his assumptions, but I understand they included potential decreases for Arizona State University West Campus, for the University of

Arizona College of Medicine, and for the University of Arizona Main Campus. He qualified that by then saying his recommendation was for a lump-sum budget to the Board of Regents, and the Board could then distribute funds among the three universities as the Board saw fit in order to meet the requirements of the three universities.

"It's not a particularly pleasant picture that we're looking at. I think, given the state of the current State fiscal picture, there is, unfortunately, the possibility that some of this is going to occur. Certainly you're looking at a tight year in the current year. I want to make everyone understand we believe this is only the beginning of this cut. The Governor's recommendations have traditionally been more conservative in the last couple of years than the JLBC's recommendations. So we're hopeful that we may be able to turn that around somewhat, but I wouldn't want to hold out an optimism that we're going to make significant changes. I think if we were to get from zero to 2.5 or 3 percent, we'd probably be doing pretty well. I'd be pleased to respond to any questions that you might have on this rather dismal picture."

Senator Garcia asked if the Senate could be provided with a copy of the transparencies Dr. Jordan had used today, and Dr. Jordan responded affirmatively.

Senator J. O'Brien asked if there would be any merit in refinancing the University's bonds. Dr. Jordan responded that the Board's Resources Committee had just approved a refinancing of bonds at Arizona State University, and Northern Arizona will submit a bond refinancing package next month. It was his understanding that UMC will bring forward a bond refinancing package, as well. "One of the things you've got to consider is, is it financially feasible or not, and certainly the federal government has made that more difficult to achieve by eliminating the amount of arbitrage that can take place. You have to look at what bonds are coming due for you and how far up they are, and make an evaluation of that. The Board is certainly very positive at this point in terms of examining refinancing. When Arizona State University put their package together a month ago, they were looking at refinancing, at that time, \$24 million in bonds issued in 1986. In the meantime, as a result of the change in the bond market, the savings that occurred between about the 10th of December and the 10th of January went to \$1 million. And then because of some additional provisions having to do with negative arbitrage, they made a decision to add some additional bonds onto the refinancing, and they took the total savings up to an estimated \$1.4 million. So if you have bonds in that category, it's a good time to do it."

Senator Silverman asked Dr. Jordan to comment on the mandated expenses category and the increase in utility costs for the University of Arizona. Dr. Jordan said that, if he remembered correctly, there was an approximately \$900,000 utility increase because of rate increases involving Tucson Electric, which did not affect the other universities, and another increase related to a court order and access. Dr. Cole noted that it was Public Law 504, related to handicapped access. Senator Silverman asked if our campus is positioned worse than the other universities in this regard. Dr. Jordan said he didn't know if that was the case, in terms of looking at comparable facilities, but that UofA is the one the court order applies to. "You've been singled out for that blessing."

On behalf of the Senate, Dr. Cox thanked Dr. Jordan sincerely for his presentation today. The Senate responded with a tremendous round of applause.

REGULAR OPEN SESSION: Dr. Carol Bernstein, member of the Executive Board of the American Association of University Professors, UA Chapter, said she wanted to

comment on two faculty governance problems that have been repeatedly brought to the attention of AAUP, and some solutions. (1) Review of Vice Presidents with systematic faculty input. Dr. Bernstein said that faculty carry out the three major missions of the University: teaching, research and service, and faculty knowledge and needs should be taken into account in administrative decisions at this university, to ensure that administrative decisions are responsive to faculty input, and should include faculty evaluation of administrators. She suggested that the Senate draft written guidelines for the regular review of Vice Presidents with systematic faculty input, with review results made known to the university community. (2) Adoption and protection of department and college bylaws. She said that currently there is no mechanism at the UA to encourage routine adoption of bylaws when desired, or to ensure that once adopted they will be adhered to, and AAUP proposed that the Faculty Senate create a Committee on Constitution and Bylaws, to receive recommendations on revisions to the Faculty Constitution and to evaluate bylaws, before adoption, to ensure they meet minimum standards. She said minimum standards should include provision for regular meetings, the keeping of minutes subject to faculty approval, and provision of secret ballots at the request of any faculty member. She said the committee could also hear grievances of faculty members who believe their rights, under their bylaws, have been violated, and have the right to place reprimands in the personnel files of any administrator or faculty member who was judged by the committee, after a hearing, to have impeded the due exercise of department or college bylaws.

Senator Hetrick said he was concluding 28 years as a member of the faculty, and about 20 years as a member of the Faculty Senate, having served both as Senator-at-Large and College of Engineering Representative. He wanted to comment on a few items of unfinished business. (1) Many promised renovations to the old Engineering Building never happened, and the maintenance is now worse than ever. He said there are other badly neglected buildings near the center of campus, and they need help now. (2) Every administrator who calls him/herself a professor should be required to teach a course, and he said he endorsed the proposal made by the President in December. (3) As Chairman of the University Committee on Ethics and Commitment for the past three years, he noted that the committee's charter is somewhat restricted, and it had chosen to reject some cases. He suggested that the Senate may wish to reconsider the scope of its charter and to create a rigorous definition of misconduct in research, scholarship or creative endeavor. He said it is fortunate that the committee has not received a case of alleged misconduct of the type that has received national attention in recent years. Turning to another subject, Senator Hetrick said the term political correctness has a range of meanings, "from the suppression of free speech on one hand to the destruction of traditional curriculum on the other. I hope you will be zealous in protecting free speech. At the same time, I encourage the trend toward increased cultural diversity in the curriculum, and I urge you, to not let the conservatives discredit this important movement by labeling it as a form of political correctness. Thanks to all my friends." Senator Hetrick's remarks were greeted with thunderous applause.

Senator Knight said she wanted to share with the Senate a matter brought to her attention last week, concerning a \$67,000 budget cut for the University Composition Board, from its \$83,000 budget, which will impact many undergraduate students by eliminating English 397, the supplementary course taken when a student fails the Upper-Division Writing Proficiency Examination (UDWPE). She said the cut will also lead to a reduction by about half of the number of UDWPEs, significantly inhibiting a student's ability to graduate. Senator Knight noted there is already concern for the possibility of graduating in four years. "Of the 3,000 students who would like to take the UDWPE in the spring, they believe only

1,200 to 1,400 will be allowed to do so. Of the students that need English 397 to get into other courses, currently none can be accommodated." She said she was not requesting action from the Faculty Senate today, but she would like to see discussion occur because of the relevancy of this issue to the Senate.

Senator Barrett commented on the Advisory Committee on International Scholars of Tucson, on which he is serving as Chair. He said the committee is comprised of volunteers from the University and the community who provide assistance to international visiting faculty. He wanted to extend thanks to William Welch, Director of the Office of International Programs, for assistance in printing the latest edition of the committee's handbook, copies of which are provided to the international faculty on campus. He added that when departments have visiting international faculty, they may wish to contact this committee.

REPORT FROM THE PRESIDENT: President Pacheco said he had a series of comments, all designed to bring Senate members up to date on recent developments, two of which involved searches for senior University positions.

"First, as you know, we are nearing the end of our search for a new Vice President for Student Affairs. I want to commend Vice Provost Holly Smith and her committee for the thorough job they have done in identifying a group of first-rate candidates. I received those recommendations several days ago, and I expect to arrange, after I have had an opportunity to consult with Vice President and Provost Cole, two of these to revisit the campus in the near future. It is my intention to make an appointment with minimal delay after that. In addition, of course, we need to identify a new Provost. I am pleased to say that Regents Professor John Law has agreed to lead this search, and that his advisory search committee is almost complete. As soon as everyone has returned to campus, I shall be able to appoint the remaining members. I can say that the members of the committee to this point, in addition to Professor Law, include Dean John Taylor, Regents Professors Chandra Desai and Douglas Stuart, as well as Professors J. D. Garcia, Barbara Atwood, Michael Gottfredson, William Roeske and Carlos Velez, as well as Dr. Donna Swaim. Our Librarian, Dr. Carla Stoffle, is a member and, in addition, there are staff and student members. I will be meeting with the committee for the first time tomorrow afternoon. As this group begins its work, I ask that every member of the faculty give some thoughts to nominating superior candidates. We have a critical appointment to fill and the responsibility must be shared among all of us.

"You may recall that, in early December, I had asked a planning committee led by Professor Patsy Brannon, who is president of the Association for Women Faculty, to advise me on the membership of our new University Commission on the Status of Women. I also invited any member of the campus community to either nominate suitable members or, indeed, indicate their own interest in serving. The planning group surveyed the large number of responses received and now has reported. I am pleased to say that Professor Jerri Schultz of Family and Consumer Resources has agreed to chair the new commission. I expect to appoint the remaining members within the next week.

"Turning to a very different matter, many of you will be aware of recent discussions about the advisability of conducting a presidential inauguration in light of current and anticipated financial difficulties. It is clear that opinion on the matter is broadly divided. A broadly representative advisory committee, as well as members of the Arizona Board of Regents, was of the opinion that an inauguration would be valuable to the University. Once I had received assurances that there would be external gifts to meet the costs involved, I felt that it

was a responsible decision to go ahead. Originally, I had in mind a date in late February. The initial planning, however, suggested that this left inadequate time to do a thorough job and also to bring together the elements in the community and the university that need to be brought together. Therefore, the Presidential Inauguration will be held on a yet to be selected date in April or early May, and I will let the Senate know the date and the program as soon as possible.

"I want to comment on one last item. I know that a number of you have inquired when I proposed to say something about the way in which I propose to organize the University in the future. I can understand the concern, and I simply want to indicate to you that I expect to talk to the Senate about the University organization at the meeting of February 3. I believe that I will have some thoughts in mind at that time and can express to you, perhaps, some options. I will be prepared at that time to speak with you about it."

REPORT FROM THE PROVOST: No report.

REPORT FROM THE PRESIDING OFFICER: Dr. Cox said that she believes strongly that the Senate is a very important group in terms of what happens at the University of Arizona, and she has been both honored and privileged to work with it. She said she would like to take this opportunity to encourage Senators to continue dialogue and discussion about the work of the Senate, the issues and concerns it faces, and the exploration of options and alternatives within Senators' units. Dr. Cox added that she wanted to encourage Senators to continue that dialogue with Senator Garcia and herself, so that they could do the best possible job of representing Senators' views. "I don't know how many of you have an opportunity within your units and at general College meetings to discuss the workings of the Senate. This is something that is an expectation, and if this is not happening, we want to encourage you to do this. If there is some external support needed in helping to open up that opportunity, then please contact me or Senator Garcia or both of us, so that we can do everything in our power to help you to spread the message of faculty governance and the work that we are attempting to do on behalf of a wonderful institution. I want to thank you for your efforts up until this point in time." She also encouraged Senators to remember that Senate meetings start at 3:00. With a full agenda, a five to ten minute wait takes a toll on the business at hand.

"In view of the severity of Ford Burkhart's load and his schedule this year, the Senate Executive Committee has once again asked the aid of David Butler, who has agreed to serve as the Senate's Recorder for the Spring Semester 1992, and you see him joining us here at the table today. We very much appreciate his willingness to assist us in this way. I remind you that your Secretary of the Faculty is still Ford Burkhart, and he will be available to the faculty in the other aspect of that particular role."

Dr. Cox said she would like to focus on one Senate standing committee each month, providing highlights of that committee's activities, beginning today with the Instruction and Curriculum Policy Committee: Concerning foreign graduate teaching assistants, Adela Allen from the Graduate College and Jonathan Seely from CESL reviewed the procedures for evaluating English fluency for GTAs. After some discussion, the committee decided that the current procedures were adequate. The use of foreign GTAs in their first year, however, should not be encouraged. Secondly, the committee has drafted a proposal which would change academic program reviews, and this will be submitted to the Senate for consideration. In addition, the committee has discussed the General Education Program with the Task Force on Undergraduate Education at some length at several meetings. A statement

summarizing committee consensus is being finalized, and will be submitted to the Senate as soon as possible.

REPORT FROM THE CHAIRMAN OF THE FACULTY: Senator Garcia reported the election process for faculty governance offices is underway, with formal announcements due in General Faculty mailboxes today. He asked Senators to alert their colleagues about the election process.

REPORT FROM THE PRESIDENT OF ASUA: Senator Knight reported that Arizona Students Association (ASA) is planning to send representatives to Washington, D.C. prior to the February meeting to lobby on the federal financial aid issues, especially important because 80 percent of the financial aid available at the UofA is federal money. ASA will also attend the Board of Regents meeting on Friday. She noted that ASUA elections petitions will be out February 10, and she asked Senators to encourage students to get involved and stand for election.

QUESTION AND ANSWER PERIOD: Senator Witte, referring to a question she had asked Dr. Smith in the spring and believing it had not yet been fully answered, asked Dr. Cole whether the organization known as CUE has been granted official University approval. She said she believed it was indicated at the time that this was not the case, but a recent communication stated that the Provost had extended official approval to the group. She questioned whether they should be allowed to use the University logo, with the signatures of two Deans, to solicit funds for the endorsement of candidates in the General Faculty election and to lobby the state government.

Dr. Cole responded that official approval does not exist for any organization like that, or for AAUP, or the Association of Women Faculty, or any of the groups that now have access to University mailing lists. He said this would have to be discussed with the President, the concept of establishment of a faculty committee to help develop a policy for official recognition. "However, since there is no policy for official recognition, it was deemed appropriate to treat them like the other ones I've just mentioned, and give them the same opportunities. The two opportunities are to use the campus mailing list and to have access to rooms. There is no other official status given to any of the other groups that I am aware of. Now if individual deans or faculty are claiming certain special things as a result of this, I don't think we have any control. We certainly can stop anything that's not appropriate, but nevertheless we have not given anybody the right to endorse or do anything else. By the way, that was a decision that was made by the President after a consultation with our legal staff."

Senator Witte asked Dr. Cole if he thought it appropriate that funds were being solicited. She said she recalled that at one time faculty associations were specifically not allowed to use the mail for such activity. "I think that is a very special privilege, to solicit funds across this campus."

Dr. Cole said he would be happy to look into the matter and provide a report at the next meeting.

APPROVAL OF MINUTES: There being no objections, the Minutes of December 2, 1991, were approved as distributed.

DISCUSSION AND ACTION ON THE REPORT OF THE AD HOC COMMITTEE ON DISCRIMINATORY ACTION: Professor Charles Ares said that Dr. Jay Stauss and Dean LuAnn Krager were present, to assist in responding to questions. Professor Ares said the committee was asked by President Koffler to look at the rules of the University

and determine whether or not the rules that dealt with such matters as discrimination and discriminatory speech were adequate to deal with any problems and to protect the right of free speech and free inquiry on campus. The committee met innumerable times for a year to discuss the substance of the problem, and held two public hearings. The committee examined the "mountain of literature," the increased diversity on campus and its resultant tensions, and the need to enhance that diversity while at the same time protecting freedom of inquiry and speech.

He said the present rule is epitomized by Section 10 of the Student Conduct Code, which says that it is a disciplinable offense to engage in "harassment or unlawful discriminatory activities on the basis of age, ethnicity, gender, handicap, national origin, race, religion, sexual orientation, or veteran status." He said everyone agrees the rule is inadequate and far too vague; "if you want to put it in lawyer's terms, it's unconstitutional because it necessarily imposes on administrators a vast discretion to decide who to discipline and who not to discipline." The rule does not provide specifics as to prohibited or protected conduct, but is repeated in the proposed Rules for the Maintenance of Public Order, which the Regents by statute were mandated to adopt, and which apply to all personnel on campus.

Professor Ares said the committee is one of the best he has ever been associated with. "They approached this with no sense of prior commitment to the ultimate outcome. We tried to work our way through these problems to what we think is the optimum resolution. It was done in the best spirit, the spirit of full discussion and full inquiry. Our final conclusion is based on several general propositions....I think they are important principles, and I want to reassure you that this committee had them in mind when we came to our conclusion. First, we believe very strongly that the vigorous exercise of freedom of speech and freedom of inquiry on the campus is absolutely essential, not only to a democratic society, generally, but particularly to a university. The freest possible expression of ideas is to be absolutely protected on the campus so far as we can make that protection absolute. It is to be expected and indeed encouraged that students will experiment with new ideas, and in fact with new language in ways expressing their ideas as they participate in a liberal education. It is unconstitutional and works unwise for the state to try to prohibit speech simply because it's offensive or abhorrent to us. We do recognize, as the whole society does, that speech is not absolutely free. The state does have power in some limited circumstances to regulate even speech where it is shown to be essential to protect a compelling society interest....[as in the case of] extortion, inciting to violence, or conspiracy to commit a crime....Our committee examined those kinds of rules which protect equal education opportunities, and concluded that they are far too broad...and probably unconstitutional....What our committee does propose is a very narrow rule based on the constitutional notion of fighting words. Two types of speech that are not constitutionally protected:... words which are likely to lead to violence and words the mere utterance of which cause harm....We do not propose a rule that outlaws abhorrent ideas or simply outlaws the utterance of offensive words. Nor do we propose a rule that outlaws the creation of a hostile educational atmosphere, as that term has come to be used in connection with educational opportunities. Quite simply, what our proposal attempts to do is to craft a rule to protect specific individuals from verbal assault, directed at that individual, and intended to vilify that individual on the basis of race, gender, ethnic origin, sexual orientation, and so on, and employ what I have termed gutter epithets. All of those things must combine in the kind of speech we think the University can legitimately prohibit. Therefore, our rule on page 14 of our report defines personal vilification in the following way:

Speech or other expression constitutes personal vilification if it is intended to insult or stigmatize an individual or individuals on the basis of their age, sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin or veteran status; and is addressed directly to the individual or individuals whom it insults or stigmatizes; and makes use of insulting or fighting words or non-verbal symbols which by their very utterance inflict injury or tend to incite to an immediate breach of the peace, and which are commonly understood to convey direct and visceral hatred or contempt for human beings on the basis of their age, sex, race, color, handicap, religion, sexual orientation, national or ethnic origin, or veteran status.

That is the rule that we have recommended be adopted as a substitute for Section 10 of the present Code of Student Conduct."

Professor Ares said one member of the committee, Elizabeth Buchanan, a member of the University Attorney's Office, dissented from the report, and he also filed a separate statement. "Because both documents were described in a previous Senate meeting, I want to make it clear what the position of the committee was. Otherwise, the report was joined in by all other members of the committee. Elizabeth Buchanan did not say that our proposal was either unconstitutional or illegal--she simply thought it was unnecessary. And if you read my statement, it is absolutely clear that I did not think that our proposal was illegal. That is misleading....I dissent only somewhat from what I thought was a statement of rationale that went more broadly than necessary."

Concerning the recent Michigan and Wisconsin court cases, he said their rules were much more broad than the rule crafted by the committee. "It was for that reason that our rule is drafted much more narrowly and tries to focus simply on verbal epithets." He said the committee drafted as narrowly as it thought possible, without impinging on speech or ideas.

Senator Silverman asked why the committee made reference to fighting words rather than the traditional breach of the peace. Professor Ares responded that there are very few incidents in which saying something to somebody is likely to be decided a breach of the peace, but the committee's primary concern was for the harm caused to the individual who will be damaged, personally hurt, injured by the expression of certain language. The motivating principle of the rule drafted was not to affect the intellectual atmosphere, but to protect individual interests. He said there is a small category of words, or "gutter epithets," which by their very utterance to an individual inflict hurt. He said the committee believed the University is entitled, and may even have an obligation, to protect students from that kind of harm.

Senator Silverman asked about a section in the Preamble, "speech that is directed personally to an individual or small group of persons," which was confusing in light of Professor Ares' stated concern for the individual. He asked about someone speaking on the mall, and using a gutter epithet to whoever showed up--would that be covered by the rule? Professor Ares responded that context is very important, and the epithet would have to be directed at an individual. Referring to the quoted section, he said many people use epithets with two or three people in one fell swoop, but the rule would not cover someone making a speech and indicating women shouldn't be Engineering students or surgeons.

Senator Tomizuka requested clarification of the committee's goal to narrow the definition, in view of an apparent trend to broaden sexual harassment rules nationally. Professor Ares responded that sexual harassment issues stem from the Civil Rights Act, and a body of law is developing in such cases to the effect that sexual discrimination creates a hostile sexual atmosphere. "The only argument that I find satisfying as to why that's different from what we're doing is the difference between the workplace and the university. It may mean that, if the workplace is sufficiently special, then that kind of regulation will impinge on speech and will be upheld. If we did adopt that approach, we would be forced, I suppose, to construct a much broader prohibition of speech, which we did not want to do....We don't think it's wise."

Senator Aquilano asked if calling an individual a gutter name normally linked to another group, would qualify as verbal abuse. Professor Ares said he believed that the verbal abuse must represent vilification, an expression of hatred or contempt. Senator Aquilano asked if the proposed rule was not approved, and if a person was verbally abused and reacted by causing injury to the person who was giving this verbal abuse, could the victim of verbal abuse be charged with assault and battery? Professor Ares said that without a rule like this, state law would apply, which might involve disorderly conduct or disturbing the peace, and which committee member Elizabeth Buchanan had argued were sufficient to deal with this type of problem. He said he has always argued that they are so broad and vague that they are unconstitutional, but the courts have never agreed with him.

Senator Witte commented that when she read Professor Ares' and Elizabeth Buchanan's separate statements, she received the impression that he was expressing the opinion that this rule was treading on dangerous ground. Professor Ares responded that he had read the remarks attributed to Senator Witte in the December Minutes, and the remarks were not accurate. Senator Witte said she had been influenced by the following sentence: "Even a rule prohibiting personal verbal assaults applied in circumstances in which it is difficult to separate strong political-social views from personal venom poses considerable risk to free-wheeling discourse, as Ms. Buchanan's statement shows. Nevertheless, relying on the good judgment of University officials in applying this rule..." and she questioned whether speech would be sufficiently protected. She said she carefully read Elizabeth Buchanan's dissent, "I do not agree that the rule recommended by the committee sufficiently protects individual expression of opinion that should be free from state restraint in the guise of this state university rule" and concluded she was suggesting the rule was unnecessary and inappropriate. She also noted that the City Council will be considering the same issues, and quick enactment is considered unlikely. "I certainly hope the Faculty Senate...will also not consider quick enactment likely. She said she had one further question. "I believe you clerked for Justice Douglas. I would like to know, what would Justice Douglas say about this? Would he consider it free speech?"

Senator Mautner, on a point of information, asked it would be possible to obtain the sense of the Senate on this proposal, in order to expedite matters.

Senator Goetinck asked if this rule would have applied in the recent case of a campus police officer having been shot as the result of an individual having been verbally assaulted. Professor Ares responded that he believes the proposed rule would have applied, not for criminal prosecution, but for student disciplinary action.

Professor Ares returned to Senator Witte's questions, the first concerning Justice Douglas. He said he had no idea what Justice Douglas would do. "Let me say this in that respect. I have prided myself, and I'm getting towards the close of my career, on being a civil libertarian...There isn't anybody on this campus, I think, who has spent more time worrying about protection of free speech than I. This problem is a terribly delicate, difficult problem. It does not lend itself to broad rhetoric....As Justice Douglas' former law clerk, my first inclination was to say no, don't adopt a regulation that regulates speech. But the more you look at the facts, and the more you hear stories of some young black women on campus who tell us stories of having been verbally harassed and called 'nigger,' the more I finally came to the conclusion that there is a very narrow minimum of verbal assault that we are justified in saying that forms no part of the discourse at a university...or in a civilized society, however tolerant that society might be....Ultimately I quite honestly and frankly came to the conclusion that I simply could not walk away from this problem, and the committee ought not to walk away from this problem....We tried to draft a rule that protects that interest but goes no further than that. In one open public session somebody attacked me for being insufficiently sensitive to 'honkies' because I said I didn't think that if some black person called me a 'honkie' that they ought to be disciplined. My reason is I don't feel that hurt. When you place racial or sexual epithets against the background of oppression and of telling people that they're inferior because they are women or blacks or Jews, then the use of those words does hurt in a way that calling me a honkie does not hurt. We tried to draft a rule that tries to limit itself precisely to that injury."

Senator Mitchell asked if coverage of the policy would extend to fraternity houses. Professor Ares responded that the Code of Student Conduct applies not only on campus, but to campus-sponsored events.

Senator Pitt asked if the receiver's sensitivity could determine application of the rule. Professor Ares said that has to be answered not in terms of the victim's state of mind but in terms of what is commonly understood in this community and what is intended by the speaker.

Senator McElroy commented that he was disturbed that no note had been taken of visual symbols, despite the precise attention paid to language.

Senator Aquilano stated that it bothered him that the Senate might vote against the rule simply because it may be difficult to enforce. "I think we should support it in the sense that at least we convey concern about such verbal harassment." He said he would be interested to hear from Dean Krager as to the importance of such a rule in carrying out her duties.

Dean of Students LuAnn Krager said the committee's decision to craft a narrow definition represents her views as well. She said the difficulty with the section on prohibited conduct in the Rules for the Maintenance of Public Order was it was too vague. "That was not an original thought. I had been reading, had been in contact with other institutions, and I consulted with lawyers. And they said it is too broad." She said she then focused on the system level, but the desire was to have specific definition appear only in the campus-specific documents. President Koffler charged the committee with drafting that definition, but with the passage of the system document completed, and the campus-specific document unresolved, she was faced with the need for a more delineated rule where none existed. She had community leaders, student leaders, and students at large coming in after the fraternity incident, asking her to define the rule

as stated in the Code of Conduct and explain its consequences. "Without guidance from any other source, I started to use this narrow definition...trying to not abridge speech in any way...and only in those very stigmatizing situations did we consult with attorneys....If we do not...pass this sort of document, I would feel it would be my charge to come back and start lobbying the system to excise that particular clause out of the Code of Conduct. It just could not be in there without it being defined. I feel badly about that, because I don't know what statement that would make to the larger community. Do I feel that discriminatory statements should not be in the Code of Conduct? Do I want to set us back two decades? No, I certainly don't. But as it stands, it's really untenable because of false expectations community-wide and because of the pressure. Thank you for asking."

Senator Witte noted that Dr. Cornelius Steelink was present, and had requested her to read a list of vilifications which he considers to be the worst of the fighting words used on this campus, some of which are euphemisms: coward, traitor, infidel, incestuous, exam-cheater, and fornicator. He would like to know if they would be punished if this document is approved.

Senator Jones asked about the relationship between this proposed language and the Rules for the Maintenance of Public Order, so that he would understand the consequences of his vote. And, if the proposed document is not approved today, what rules will apply? Professor Ares said that as he understood the process, the proposed document is a recommendation that the Rules for the Maintenance of Public Order be changed. He was not sure what action the President would take if the Senate did not approve the document, but that the Board of Regents would make the ultimate decision. Senator Jones asked if the possibility existed that the definition be left vague, and Professor Ares responded that that did appear to be a possibility.

Professor Ares then responded to Senator McElroy's comments on non-verbal symbols. He said this is a difficult problem, but it wouldn't appear to make much sense to add a rule that applied to speech but did not also apply to non-verbal symbolic conduct. When the committee discussed this area, he said, their thoughts included conduct which speaks and items like the swastika. He said the Supreme Court and the higher courts have ruled, for instance, that Nazi groups have a constitutional right to march in a community which houses many survivors of the death campus, and others have the right to wave Confederate or KKK flags. Professor Ares said that it's only when a symbol is used to convey to a specific individual contempt and vilification that it can be covered by the proposed rules.

Dr. Cox called for a straw vote to either approve or reject the proposed rule. A show of hands indicated 28 favored the rule, and 10 were in opposition.

Senator Aquilano then moved that the Senate adopt the recommendations of this report (motion 1991/92-47), and that motion was seconded. Senator Silverman then moved to strike the from the proposal the word "individuals" and that motion (1991/92-48) was seconded. A show of hands indicated approval of Senator Silverman's amendment: 27 in favor, 9 opposed. A show of hands on Senator Aquilano's motion to adopt the recommendations of the report, now amended, indicated approval: 33 in favor, 10 opposed.

SUSPENSION OF RULES: Senator Garcia said he would like to move to suspend the rules to consider one item under New Business because it needed the action of the Senate at this time. The motion (1991/92-49) was seconded and approved on

a show of hands (18-4).

**NEW BUSINESS:** Senator Garcia reported the Provost has requested clarification of the policy on Review of Deans, to determine whether Multi-Year Lecturers in the College of Nursing can participate in the review process. He said the Board of Regents, in its original creation of Multi-Year Lecturer positions, intended that these not be second-class citizens, and so stated. Senator Garcia had provided Senators with a copy of pages 52 and 53 of the University Handbook for Appointed Personnel, where the Review of Deans policy appears, and had noted the locations for insertion of the words "and Multi-Year Lecturers" on page 53. He said the faculty of the College of Nursing had requested Senate action on this amendment to current policy, and moved (motion 1991/92-50) that the Senate approve the inclusion of Multi-Year Lecturers in the process of the review of deans; the motion was seconded.

Senator Atwater asked about other units which might be affected by approval of this motion. She said she believed there might be some units with a substantial number of Multi-Year Lecturers, and her concern was that, in the absence of language to the contrary, these individuals might comprise a substantial number of the review committee. She wondered about total numbers of this category of individuals in various units. Senator Garcia reported that the Senate's Academic Personnel Policy Committee (APPC) had examined the number of Multi-Year Lecturers throughout the campus: the College of Nursing had the largest absolute number of any unit on the entire campus, and he believed that there were only ten Multi-Year Lecturers total on the main campus. He said APPC was asked to consider this issue, and since they have not met since this issue arose in mid-December, they were polled by telephone and approved this action. A voice vote on motion 1991/92-50 indicated approval without dissent. Senator Badger asked that the record show that the College of Nursing faculty thanked the Senate for this action.

The meeting adjourned at 5:10 p.m.

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David Butler  
Faculty Senate Recorder

**ATTACHMENTS TO THESE MINUTES:** None.

**MOTIONS APPROVED AT JANUARY 13, 1992 MEETING:**

- 1991/92-47 Approval of the Final Report of the Ad Hoc Committee on Discriminatory Speech.
- 1991/92-48 Approval of amendment to Motion 47.
- 1991/92-49 Approval of motion to suspend the rules and move to New Business.
- 1991/92-50 Approval of inclusion of Multi-Year Lecturers the Review of Deans and Department Heads.