

**THE SENATE OF MICHIGAN TECHNOLOGICAL
UNIVERSITY**

Minutes of Meeting 265
11 December 1996

Synopsis: The Senate

- (1) Heard Andrea Dickson of Butzel Long explain the difference between the legal "due process" and the rights provided by the Senate-approved Scientific Misconduct Policy.
- (2) Passed the revised Proposal 36-95, Scientific Misconduct Policy, which eliminated the wording "due process" and replaced it with reference to the procedures outlined by the proposal.
- (3) Passed the revised Proposal 23-94, Scientific Misconduct Procedures, making wording consistent with 36-95.
- (4) Heard that President Tompkins has appointed Ann Maclean (Forestry) to the Sabbatical Leave Committee.
- (5) Heard a report from John Sellers and Kim Maxwell (Advancement) on the Capital Campaign.
- (6) Heard that the Board of Control approved a change in the name of the School of Business to School of Business and Economics.
- (7) Heard that the Board of Control postponed action on the TIAA/CREF Health Benefits Plan until the Senate could provide input

1. CALL TO ORDER AND ROLL CALL

President Bornhorst called the Senate Meeting 265 to order at 5:32 p.m. on Wednesday, 11 December 1996, in Room B45 of the Electrical Energy Resources Center.

Secretary Glime called roll. Absent were representatives from Army/Air Force ROTC and Finance and Advancement. Liaisons in attendance were Robert Warrington (Dean, College of Engineering), Evan Schemm (GSC), and Ted Soldan (Staff Council).

2. RECOGNITION OF VISITORS

President Bornhorst introduced Robert Warrington, the new Dean of the College of Engineering, who expressed that he was happy to be here. Guests included Fred Dobney (Provost), Marcia Goodrich (*Tech Topics*), Les Leifer (Chemistry), Beth Flynn (Humanities), Freydoon Arbabi (Civil & Environmental Engineering), Andrew Londo (GSC), Duane Thayer (Met and Mat Eng), Richard Heckel (Met and Mat Eng), and Peggy Heckel.

3. APPROVAL OF AGENDA

Mroz MOVED and Seely seconded the motion to approve the agenda. The motion to approve PASSED on voice vote with no dissent. [Appendix A. NOTE: Only official Senate and Library archival copies of the minutes will contain a full complement of appendices.]

4. APPROVAL OF MINUTES FROM MEETINGS 263

Gale MOVED and Sandberg seconded the motion to approve the minutes of meeting 263 as presented. The motion PASSED on voice vote with no dissent.

5. OLD BUSINESS

President Bornhorst introduced Andrea Dickson, a lawyer from Butzel Long. Ms. Dickson presented the meaning of "due process" from her perspective as a corporate lawyer. She stated that the Senate had set out (in the Scientific Misconduct Policy and Procedures) an elaborate procedure mechanism that gives much more protection than does legal due process. The Supreme Court cannot figure out what is required by law to uphold due process. Therefore, our policy was incredibly vague in its use of this wording. If the policy refers to our procedure, it is much stronger and clearer. The policy refers to academic tenure and other rules and contractual rights. The policy can't deprive you of the due process already guaranteed by these rights. The university has already been able to clear up two scientific misconduct cases before they went to court.

She clarified that a research assistant does not have a property right to continued employment, whereas a tenured faculty member does. Therefore, the research assistant has no guarantee to due process through the courts. In cases regarding students, the courts routinely defer to the academic discretion of professors.

If a student or employee is dismissed for performance issues, and the scientific misconduct policy gives them due process, they can say they had a contractual right because the lawyers will look at all the policies and find that one of them provides for due process. Having different policies gives mixed signals about the policies and procedures. Our scientific misconduct policy actually gives more procedural rights than are due the individuals, but in the case of scientific misconduct, we want to err on the side of protection. Our decisions will affect the careers of the individuals involved, both the accuser and the accused.

Due process does not require face to face review of the charges. There is no right to an attorney. There is no transcript of the hearing. There is no right to see written evidence against the accused or to refute it. Rather, due process requires what the constitution provides: protection of life, liberty, and property. An accusation of scientific misconduct could stigmatize and disable someone's ability to move forward in his/her career. An accusation of scientific misconduct triggers the liberty interest. A student has no property interest in a degree and the only deprivation is associated with acts that are capricious. The student has rights to procedures and policy and to his/her constitutional rights.

Someone can always sue the university, whether the policy says so or not.

Non-tenured faculty and researchers have no property right because they have no contractual agreement of continued employment.

Due process requires only a written statement of accusation. It could be anonymous, and in fact one graduate student at another university was dismissed on the basis of several anonymous letters. Due process requires only a meaningful opportunity to be heard. Our policy lets the accused review everything available to the committee. Due process doesn't require that material be retained. Our policy allows the accused to be in the same room with the accuser. Both the accused and the accuser need protection; backlash can be very significant.

Carstens MOVED and Sandberg seconded the motion to approve the revised Proposal 36-95. [See minutes, pages 6086 and 6716 for a copy of this proposal.]

Senator Whitt questioned whether the lawyers have agreed that there are ambiguities of due process. She claimed that different arguments would be made if the lawyer presenting them represented employees instead of employers. Dickson responded that lawyers can and will always argue, but that they would agree that this policy gives more rights than those given by due process.

Whitt asked why the university [Board of Control] lawyer always takes due process out of our policies. Dickson responded that there must be a notice of charges and an opportunity to respond, but that the accused is not guaranteed the right to face the accuser.

Whitt asked why not include both due process and our procedural guidelines. Provost Dobney asked if we want to include students in the legal due process, which would afford them the opportunity to use the courts to challenge grades.

Senator Sweany stated that he doesn't understand how adding "due process" can hurt. How does the misconduct policy affect other rights like grades or thesis defense? Dickson responded that once students are given rights in one area, a good lawyer will argue that it extends those rights to all areas.

Liaison Schemm (GSC) asked if graduate students are covered by the policy. Dickson responded that they are if they are dismissed for scientific misconduct. Provost Dobney added that if graduate students are given due process in this policy, then they have property rights, and a lawyer would argue that they therefore have property rights in all areas. Dickson added that graduate students have no property rights, only liberty rights.

Whitt argued that if adding due process to the policy created a problem for graduate students, then they should be covered under a separate policy. She continued that this policy won't affect her because she is not a scientist. Her concern is that the President could overturn a decision, even if all the lower groups cleared the person. Senator Sandberg reminded her that the policy would affect her if she committed plagiarism.

Dickson countered that if someone is tenured and is fired for scientific misconduct, that person would still have the right of due process because that person has property rights.

Sweany asked if only untenured faculty can be fired. Seely asked if due process is in conflict with the procedure in this policy. Dickson responded that "due process" is not clear, whereas the procedures outlined in the scientific misconduct policy are clear. If only those procedures are followed, it is clear what one's rights and expectations are.

Whitt argued that we can specify both. Dickson argued that then we must deal with non-tenurable positions and others not normally afforded due process because they have no property rights. Whitt countered that we then need a separate document for them.

Dickson reminded the Senate that due process does not require the "mini-trial" that is guaranteed by our policy.

Senator Keen commented that Seely put his finger on the problem, that there is a possible conflict between due process and our procedures. We need a method by which we can remove a person or administer other punitive measure in the case of scientific misconduct. If legal due process is granted, it would open a never-ending case because it can't be nailed down in the courts. If there is a clear policy, the university can handle it. Therefore, it should not have a controversial part in the policy.

Whitt disagreed, stating that Keen is presuming guilt. A person is likely to hire a lawyer whether due process is in the policy or not. Sandberg responded that there may be more than one potential victim; the accuser may be the victim.

Leifer stated that we are arguing if the lawyer for the employers would agree with the lawyer for the employees. Dickson responded that lawyers are always able to debate, but the best defense attorney knows all the arguments of the plaintiff and she has tried to present those to us.

Seely stated that the basic argument is that we must follow procedures; does that mean there is no legal recourse if all procedures are followed? Dickson responded that if all procedures were followed, there would be little legal recourse left.

Sandberg CALLED the question and Mroz seconded the motion. The motion to call the question passed on roll call vote with 26 in favor, 4 opposed, and 6 abstentions. The roll call vote was as follows:

Evensen - yes	Greuer (Mining) - abstain
Glime - yes	Beck (Physics) - abstain
Reed - yes	Seely (Soc Sci) - yes
Santeford - yes	Carstens (Tech) - yes
Walck - no	Goldstein (Fine Arts) - yes
Whitt - no	Moore (Library) - no
Keen (Biol Sci) - yes	Rypma (Phy Ed) - yes
Gale (Bus) - yes	Hein (IMP) - yes
Williams (Chem) - yes	Richter (IWR) - no
Co (Ch Eng) - abstain	Gruenberg (KRC) - abstain
Sandberg (Civ /Env) - yes	Ouillette (Enroll Mang) - yes
Sweany (Comp Sci) - yes	Chavis (Stud Aff/Ed Opp) - yes
Sloan (Elec Eng) - yes	Gilles (Res/Univ Rel) - yes
Mroz (Forestry) - yes	McKilligan (HR/Fac) - yes
Pegg (Humanities) - abstain	Soldan (IT) - yes

Gopal (Math Sci) - yes Vichich (Aux Ent) - yes
Arici (MEEM) - yes Forsell (Aca Svc Eng) - abstain
Nesbitt (Met/Mat Eng) - yes Kitalong (Aca Svc Non) - yes

Bornhorst reminded the Senate that the voting units were the academic-degree-granting departments, other course-offering units, and research units. Keen requested a secret ballot on Proposal 36-95. The revised Proposal 36-95 PASSED by secret ballot with 16 yes, 11 no.

Bornhorst reported that Proposal 23-94 should be labeled Scientific Misconduct *Procedures* instead of *Policy*. He stated that these procedures need to be consistent with the policy we just approved.

Williams MOVED and Sandberg seconded the motion to approve the revised Proposal 23-94. **[Appendix B. Also, see minutes, pages 4608 and 4651.]**

Whitt commented that the only good argument for the changes is the implications for students [who otherwise do not have property rights]. We need to be concerned about our constituency; the President can overturn all committees and no one has any recourse.

Bornhorst stated that the voting units used for the original proposal were the full Senate; he ruled that to be consistent, we would follow the same voting units as used for Proposal 36-95. There was no objection, so the ruling stood. There was no discussion so a secret ballot was held to be consistent with the voting procedure for Proposal 36-95.

While votes were being counted, President Bornhorst moved on to New Business.

7. NEW BUSINESS

Three proposals were introduced as new business:

A. Proposal 2-97: Trial Usage of Alternative Student Evaluation Instruments: Amendment of Senate Proposal 2-87, Teaching Effectiveness Policy. [Appendix C]

B. Proposal 3-97: Establishment of the MTU Research Foundation. [Appendix D]

C. Proposal 30-95: Revision of Proposal 17-94, Policy on Academic Freedom. [Appendix E. Also, see minutes page 5718 for a copy of this proposal.]

New wording for Proposal 30-95 was given to Senators before this meeting came to order, based on discussions between Provost Dobney and Senator Gale, who was on the original committee. Provost Dobney explained that the first part of the first paragraph had been removed and they decided to put it back in and put part of the second paragraph into the first. The changes reflected faculty responsibility, as defined in the academic freedom statement in the AAUP guidelines, and the additions from the Provost were exact wordings from that AAUP statement. The most recent changes maintained the original wording of the committee, while adding the statements requested by the Provost. **[Appendix F]**

5. OLD BUSINESS (CONT.)

The secret ballot vote on Proposal 23-94 PASSED with 14 yes, 11 no votes.

6. REPORT FROM SENATE PRESIDENT

Proposals 27-96 (M.S. in Environmental Engineering) and 28-96 (B.S. in Applied Ecology and Environmental Science) were sent to President Tompkins for approval and received back with his approval the same day. **[Appendices G-J]**

The NCA has requested three items from the Senate for the NCA report: 1) a description of the role and mission of the Senate, which can be taken from the Constitution, 2) a description of activities and actions, which the Senate Assistant will take from the summaries of the minutes, 3) plans for the future, which President Bornhorst and the officers will provide as a brief statement relating the continued role in shared governance. No one objected to this method of satisfying the request.

President Tompkins has appointed Ann Maclean to the Sabbatical Leave Committee. President Bornhorst has sent a thank you letter to the other nominees.

We still need nominations for the grievance and separation committees.

President Bornhorst stated to the Senate his feelings that Senate committees should report to the Senate and only to the Senate. Circumventing the Senate can damage the credibility of the Senate. For example, the Fringe Benefits committee sent a letter to the Board of Control. Neither the Senate nor the Senate President had seen the letter before it was sent. The Senate needs to decide on the flow of information for all committees and representatives.

Senator Carstens responded that absolutely if it is sent to the Board from the Senate and the Senate had not reviewed it, it is inappropriate. Bornhorst corrected that perception; it had been sent from the Fringe Benefits Committee, not the Senate.

Senator Arbabi responded that he had given a copy of the letter to Bornhorst. Bornhorst responded that he received that copy two days after the letter was referenced in the Senate meeting. Arbabi responded that it was the opinion of the members who signed that it was urgent and should go to the Board before their impending decision, since the Senate had not yet decided to ask for a postponement of the issue. The Fringe Benefits Committee had worked for three years on the fringe benefits. They had been discussing it with the Provost for six months. There were no differences on providing health care, only differences on whether or not to pre-fund. The survey suggested by the Provost now asks more than just whether or not to pre-fund.

Senator Gale asked if the President of the Senate has time for a presentation at every Board meeting; Bornhorst responded "yes, every meeting." Gale followed up by asking if the Board expects the President to bring reports to the meeting.

Senator Seely stated that any organization must feel there is endorsement in the use of their name. Therefore the group [committee] should have the support of the Senate.

Senator Leifer stated that Dobney gave his report on his plan on 16 October. The Fringe Benefits Committee had no meeting in which to present their plan. They acted because they didn't know if the Board would act or postpone. The Senate has been debating

this issue since June 1995. Every person on the committee signed the letter to the Board. The Committee likewise asked that every person [Board, Provost, Senate President] get the memo at the same time.

Senator Williams stated that the procedure should be that any document from an arm of the Senate should be forwarded to the Board or other body through the President of the Senate; that would be the collegial thing to do.

President Bornhorst said that we need to get on with the agenda and will revisit the issue of reporting at a later date.

8. COMMITTEE BUSINESS/REPORTS

A. Capital Campaign Update - Kim Maxwell (Executive Director, Michigan Tech Fund) and John Sellers (Senior Vice President for Advancement and University Relations) [Appendix K]

They reported on the Capital Campaign. Initially the plan was brought to the Senate six months ago. The Advancement Office has moved forward by putting advancement officers in each college, updating records, and hiring a consultant to do test marketing. They are showing good progress. The consultant recommends a delay in the capital campaign by one year to get everything aligned for success. So far, they have favorable comments from the constituents, who say that MTU has prepared them well.

Senator Mroz asked when the campaign would begin. Sellers responded that it has been moved from October '98 to fall of '99 for the official launch, but of course many promises would be obtained before that time.

Senator Gale inquired what needs to be lined up. Sellers responded that we need to identify the top individuals [based on giving capabilities] and close in on 150 of them. We will need regular visits to these people so we can bring the department goals to them and determine what their interests are so we can offer an attractive choice for giving.

Kim Maxwell reported on her role and results thus far. She stated that the faculty play a critical role because they are the ones who have given the alumni a favorable impression of the university; she continued that we haven't set the stage to transfer favorable opinions into significant gifts yet. We need to ask for the appropriate amount, not under ask. Therefore, we need to know what individuals are capable of giving.

Senator Rypma asked what is the minimum we ask for. Maxwell responded that we are looking for six-figure gifts.

Maxwell distributed a list of the top ten ways we can help to make the campaign successful. They want more than half the gifts to be identified when the campaign starts. Sellers pointed out that there is a close correlation between what the department shares with alumni and the ability of that department to get money. If they share positive things, more money comes in to support their efforts.

Senator Chavis asked what efforts there are to get donations from minority and foreign students. She continued that many of these are among our richest alumni. Sellers responded that we are test-marketing four foreign countries: Brazil, Malaysia, India, and England. Some of the wealthiest people are outside the US. However, it is difficult to update addresses for these alumni because we cannot use the postal system as we do for US alumni. We need the help of faculty and staff who know where they are.

Chavis responded that the undergrads are trying to help establish a foreign alumni association. She has worked as a fund-raiser for politicians and knows some of the strategies. Maxwell responded that she would enthusiastically follow up on any volunteers willing to help.

B. Board of Control Relations Committee.

President Bornhorst reported that Senate Proposal 1-97 was on the Board agenda, but that the Senate had not acted on it. Therefore, he asked the Board if they would delay action on it until it was discussed by the Senate. The Board agreed.

The Board approved the change of the name of the School of Business to the School of Business and Economics and approved Proposal 27-96, MS in Environmental Engineering and Proposal 28-96, BS in Applied Ecology and Environmental Science. They delayed action on the Meese Center.

They delayed action on the TIAA/CREF health care plan, as requested by the Senate.

President Bornhorst suggested that it would be nice if the Board meetings were televised so the constituents could watch.

Senator Williams expressed concern that the President of the Senate should not raise his own items when he reports to the Board of Control as Senate President [e.g., requesting televising meetings]. Bornhorst agreed.

Sandberg MOVED and Richter seconded the motion to adjourn. The meeting adjourned at 7:30 p.m.

Respectfully Submitted by Janice M. Glime
Secretary of the Senate