



University Senate Archives

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Minutes of the Meeting of February 21, 1977

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UNIVERSITY SENATE

WICHITA STATE UNIVERSITY

Minutes of the Special Meeting of February 21, 1977. (Vol. XIII, No. 9).

Members Present: Adamson, Ahlberg, Armer, Barrier, Berman, Breazeale, Brewer, Caracciolo, Chaffee, Chopra, Cleland, Crawford, Davis, Dreifort, Duell, Graham, Greenberg, Hammond, Harnsberger, Hay, Houston, Hoyer, Humphrey, Jakowatz, Kane, Kasten, Knight, Konek, Koppenhaver, Kraft, Krehbiel, Mathis, Matson, May, McBride, McFarland, Miller, Millett, Palmer, Petree, Rhatigan, Rodenberg, Rubalcaba, Shanmugam, Sharp, Stephens, Terrell, Weaver, Webb, B. Welsbacher, R. Welsbacher, Zandler, Zoller.

Members Absent: Benningfield, Bugg, Herman, Magelli, Mays, Snyder, Terwilliger.

Guests Who Signed: Dwight Ensminger, Jeanellen Knight, Doug Stohr, Carla A. Lee, Inman Boyd.

I. CALL TO ORDER

Senate President Duell called the meeting to order at 3:31 p.m.

Noting the presence of members of the press, President Duell reminded the assembly of rule 14, page 6 of the Senate Constitution forbidding tape recording of Senate meetings unless a motion to permit recording is passed unanimously by the assembled senators.

MOTION TO PERMIT TAPE RECORDING VOTE

Senator Davis moved that recording be permitted in the interest of obtaining accurate press coverage of what was said at this session. Senator Barrier seconded the motion, and the motion to permit recording was passed unanimously with no debate.

President Duell then announced the sole topic for today's agenda as issues related to and arising from the recent Erotic Film Society incident on campus. President Ahlberg would first address the Senate regarding the sequence of events leading up to and surrounding the seizure of the film by the district attorney on Thursday, February 10, 1977. The President would then indicate the University's position in this matter and then respond to questions and observations from the assembly.

MOTION FOR COMMITTEE OF WHOLE

Senator Millett at this point made a motion to have the Senate operate as a Committee of the Whole on this issue to permit a freer and more wide ranging discussion on all aspects of this sensitive matter, and asked that the Committee should rise and report at 5:20 p.m.

VOTE

Senator Greenberg seconded the motion and with no subsequent discussion the Senate voted unanimously to act as a Committee of the Whole.

[During a session as Committee of the Whole no formal minutes are taken.]

The Committee of the Whole rose to report at 5:20 p.m.
No formal action was taken.

JOURNMENT

The meeting adjourned at 5:22 p.m.

Dr. Clark D. Ahlberg
President
Wichita State University

University Senate Special Meeting
Monday, February 21, 1977 - 3:30 p.m.
126 Clinton Hall

Some background information may be useful before I deal directly with the confiscation of the film shown by the Erotic Arts Society on February 10.

It may be useful to remind the Senate that the Erotic Arts Society was formed in 1974. It was undoubtedly formed, in part, in response to the cancellation of the Second Annual New York Erotic Film Festival in 1974.

The cancellation of that film was in response to campus complaints about its contents and the inability of the institution to determine who would be facing criminal charges as a result of proceeding. Vice President Rhatigan, with my approval, cancelled the film on this basis feeling it inappropriate to involve unknown persons in a criminal situation without their consent.

The creation of the Erotic Art Society, with its present ground rules, changed this situation. It is a bona fide student group, approved by the Student Senate in the same way other groups are approved. It has shown films without any difficulty until the past Thursday evening. Its constitution indicates that the objective of the society is to "promote awareness and study of the sociological phenomenon known as Erotic Arts." It has identifiable officers, an adviser, and a constitution.

What does Student Senate approval mean? Among other things it permits an organization to apply for full or partial funding along with other groups, to use University facilities, and to indicate its affiliation with the University in appropriate ways.

The criteria used by the Student Senate in approving groups are fairly broad. Major considerations involve race or sex discrimination, and of course no group

would be recognized, whose purposes are in violation of the law or policies of the Kansas State Board of Regents.

Perhaps that is sufficient background, and I would like now to turn to the events culminating in the seizure of the Society's film on February 10.

A few weeks ago, Vice President Rhatigan informed me that the Erotic Arts Society was bringing a film to the campus. I was assured that the group would employ the format we had agreed to in the past, limiting its showings to paid members who are restricted to University faculty, staff, and students, and I believe that one guest might be permitted. No memberships are sold at the door. Care is also taken to restrict attendance by any minor.

In the present case, in my judgment, our students handled the matter responsibly within these approved policies. I have no reason to believe that they were trying to make any special point or to bait the District Attorney or anyone else. Indeed, even the name of the film was restricted to members, who passed it along to other members. No advertising was done in any way off the campus, and even the small amount of campus publicity did not carry the name of the film. On Tuesday night, February 8, the film was shown to approximately 50 persons, without incident.

The news media picked up knowledge of the film, commented on it on the radio on February 9, and referred to it by name, "The Devil In Miss Jones."

I am informed that Channel 10 called on District Attorney Miller on the morning of February 10 to discuss the film. Vice President Rhatigan has a clear impression that prior to that visit the District Attorney had no knowledge of

plans to show the film on our campus. After an extensive interview (which appeared on the evening news) District Attorney Miller called Dr. Rhatigan, about 9:30 on Thursday morning, February 10. He informed Vice President Rhatigan that the uncut version of this film had already been determined as obscene in several jurisdictions and that he would be forced to intervene if it were to be shown. He noted that the media were keenly interested as to why he would permit the University to show the film when he had taken action to confiscate allegedly obscene films in other parts of the city. Mr. Miller noted that Kansas Statute 21-4301 made this a criminal matter, that he could not ignore it, and that he had been in touch with the Office of the Attorney General which supported his point of view. Vice President Rhatigan informed Mr. Miller of the Society's status as a restricted group, approved by the Student Senate, and that it was not open to the public. This information did not appear to have any special significance.

Dr. Rhatigan then contacted me, to report on his conversation, and to say that he would inform Mr. Quentin Stigers, the student who had originally informed him of the Society's intention to bring the film.

Dr. Rhatigan called Mr. Stigers, advising him of the potential consequences outlined by Mr. Miller. Vice President Rhatigan reported to me that he did not ask Mr. Stigers to cancel the film, taking pains to make sure that Mr. Stigers was clear on the University's position that students should understand the possible legal consequences of their decision. Dr. Rhatigan reported that Mr. Stigers said that he understood and would talk with the officers of the group. The faculty adviser, Dr. Gary Greenberg, who had counseled the group against bringing the film,

resigned when the group decided to show the film. Sometime after the Tuesday showing, Dr. Greenberg agreed to again act as faculty adviser but left on Thursday to go to Topeka in behalf of our AAUP Chapter and was not able to play any role in the deliberations on that day.

At 10:30 a.m., Mr. Stigers reported back to Vice President Rhatigan. He indicated that he had talked with the Executive Director of the Society, Mr. Cliff Curry, and others. In any case, a decision was made to cancel the film and Vice President Rhatigan so informed me and the District Attorney.

I am not able to report exactly what happened in the intervening hours, but later in the afternoon the decision to cancel was reversed. A member of the faculty informed me that media personnel urged the students to stand on their rights. It is my understanding that there was an adverse reaction to canceling the film, and Mr. Curry resigned in order to permit the group to proceed if it so desired. A new Executive Director was either elected or appointed, Mr. Neil Cook, and he immediately called Vice President Rhatigan to indicate that a decision to proceed with showings that evening had been made.

Vice President Rhatigan and I agreed that we would not cancel the film but would again inform students of their potential criminal liability. Vice President Rhatigan also informed Mr. Cook that he felt obligated to inform Mr. Miller about the change, lest it appear that he had been untruthful in reporting the cancellation. Mr. Cook said he understood this perfectly and did not object.

Dr. Rhatigan did call Mr. Miller, and inquired as to exactly what would transpire. Mr. Miller indicated that a search warrant would be drawn and the

film would be viewed by a judge of the Sedgwick County District Court. If a preliminary determination of probable cause was made, the film would be confiscated and citations would be issued that evening or at another appropriate time, and that a hearing would be scheduled. These procedures were held to be consistent with those of Heller vs New York which has been upheld by the U.S. Supreme Court. Mr. Miller also noted that he would inquire again as to any possible interest the Attorney General's Office might have on the matter.

Three showings of the film had been planned, but the afternoon showing did not occur as the Society was discussing the issue at the time. Before the 7:00 p.m. showing began, Mr. Cook made a brief statement to the 100-150 persons present, advising them of the general situation. Among the audience were Associate Judge Ray Hodge of the District Court, an Assistant District Attorney, and a member of the Wichita Police Department Vice Squad.

The film was shown in its entirety. Following the film, Judge Hodge and the other two gentlemen left the CAC Theatre after the showing and made their way to the east entrance of McKinley Hall where we are told they sought privacy to make their decision free from the turmoil created by the media personnel.

There has been considerable comment about the barring of people from McKinley Hall, for the 5-10 minutes it took for the Judge to finish his work. I need to comment somewhat further about that as there is a prevailing misconception concerning the role of local and county law enforcement officers on a State campus. While some might think their behavior to be inappropriate, it is clear that both the Wichita Police Department and the Sedgwick County Sheriff's Department do not require any special permission to be on this campus or any other State campus.

They have police powers on campus identical to their powers elsewhere in the city. They have always been very cooperative in this respect and have always worked through the University Security Department, which also has police powers limited to the campus.

Our Security Department was not in evidence on February 10, at my instruction. I thought that they were badly treated in 1974, and I did not wish them to be used as a scapegoat on this occasion. I do not think that they were happy with my decision, and perhaps if I had not been so emphatic they could have helped remedy the problem at the McKinley entrance. Some people consider this aspect of the problem to be of secondary importance, but others have expressed deep concern about it. I hope this explanation is clear, but if not we can discuss it later.

Vice President Rhatigan had two members of his staff on the scene and they reported that our students were self-controlled and respectful, with but a few exceptions. They did not attempt to interfere with the process in any way and no arrests of any kind were made that evening. It might be of interest, here, to note that the following day's paper alluded to a great deal of pushing and shoving, but both of Vice President Rhatigan's staff members and later students reported to me that nearly all the pushing and shoving was being done by the news media.

We have heard that one law enforcement officer drew his revolver at a point when tensions were increasing, but we have been able to find no one who will testify to seeing a gun drawn.

On Friday afternoon, February 11, after returning from a meeting, I found a note to call Dr. Greenberg. He explained that the AAUP had developed a statement they would like to discuss with me and a press conference had been called for 3:30 p.m. I told Dr. Greenberg that media personnel were in my outer office when I arrived asking when my meeting with the AAUP representatives would take place, and that I resented having a press conference called for my office prior to any discussion of the proposed press release. I did agree that it would be desirable to meet privately to talk with his group although that possibility seemed unlikely because of the presence of the press in my office and the brief time available to him. I suggested that he read me the statement which he did. I informed him that it was not acceptable to me; that I preferred that it not be issued, but that of course he was free to proceed. I did inquire if the AAUP membership had been polled, and Dr. Greenberg responded that it was not necessary to poll the membership. The statement was released at their press conference.

The media personnel returned to my office and I agreed to meet with them after completing the day's schedule. Many of you may have seen and heard the interview on TV. My responses may have been incomplete or inadequate or less than fully reported, so additional comments may be helpful.

First, I agree that academic freedom is of transcendent value to all of society, and that the university should absolutely resist all intrusion into its academic goals--assuming that the resistance is legal and the goals are academic.

Second, the barring of the entrance to McKinley Hall by police officers without the university's permission may contain a misconception of the jurisdiction of the police. The city police have the legal right to be on campus, and I am told that their barring of the door to permit the judge to execute court papers was not an excessive use of their police power.

The third point dealt with the University and State Board of Regents involvement in the defense of anyone who might have legal problems as a result of the showings. One must understand that the official counsel for the University and the Board of Regents--as for all state agencies-- is the Attorney General of Kansas. Far from gaining his assistance, we now find that his office is going to assist in bringing charges to the District Court.

Persons like Vice President Rhatigan and myself, if charged with civil or criminal charges, arising from our work, must rely on assistance of the Attorney General's office. Whether they give assistance or not is a decision they are independently free to make. We have no guarantees in this area and certainly students are even more disadvantaged. This does not mean that we do not have an interest in the students and Vice President Rhatigan has been discussing this matter privately with several persons in our community, but we have no university legal resources available to the students.

This is a general summary of what has occurred. It is evident from the letters, telephone calls, meetings and conversations that have taken place and which continue that the issues are important and touch deeply held personal

beliefs. It is equally apparent to anyone near the center of this controversy that there is no single view or posture that the administration can take which will satisfy everyone or, perhaps, even a majority of the campus family. This is not surprising, for the issue of what is obscene has plagued our national life and our courts and other institutions for many generations and especially in the years since 1973, when the U. S. Supreme Court handed down Miller vs California with the instruction that obscenity is to be determined by applying contemporary community standards, "not national standards."

Before asking for your advice, suggestions, and questions, perhaps, I should summarize what I believe the administration has done and where we stand at the moment in the debate now going forward on the campus.

1. We have acted to protect the rights of the students--as citizens--under the law. The Erotic Art Society was permitted to show the film. We respect their views and motives, and we have and will continue to respect the legal rights of all students.
2. There is a widely held view that the campus is a sanctuary of free expression and that the first amendment and the 14th amendment to the Constitution protects all forms of free speech--including motion picture films. That is true, but the Supreme Court and the Kansas Supreme Court have consistently held that the first amendment protection does not extend to obscene material. Like it or not, under the Miller decision, that judgment ultimately rests with a jury as the arbitrator of community standards.

3. The Erotic Art Society case will not be resolved in the Courts.

I am not a lawyer, but it is possible that they will be successful in establishing their right to show and study the film or question The Kansas Statute 21-4301, Section (3), as follows:

"It is a defense to a prosecution for obscenity that the persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same."

I am told this defense is intended to cover the traditional classroom-laboratory teaching situation. A court may rule that it also covers the Erotic Art Society in view of its stated purpose and the condition which they have adopted to govern their use of films.

We must not be confused by this possible defense into concluding that the concept of a university sanctuary or of academic freedom has any validity in law beyond the freedoms and rights that are guaranteed to all citizens.

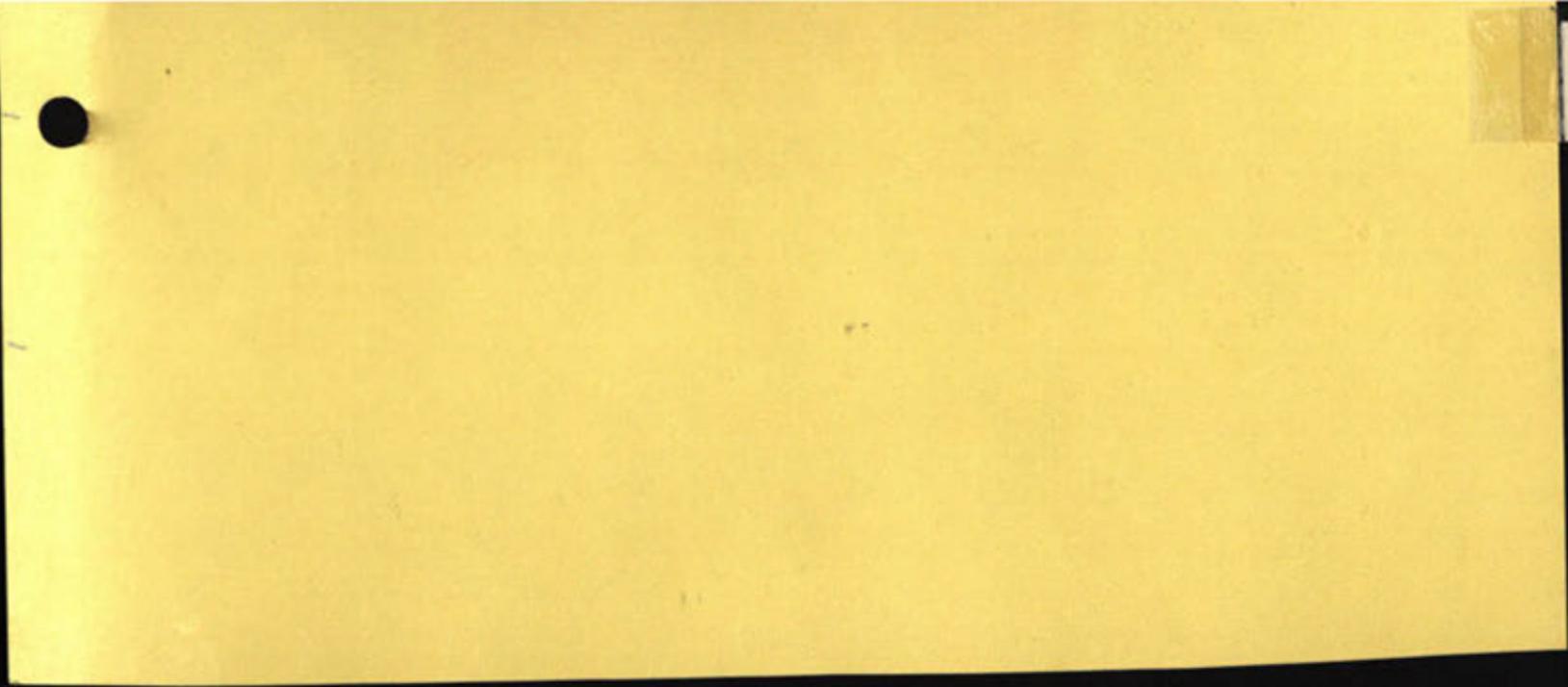
Anything that goes beyond the basic rights guaranteed by the Constitution and by statutory law is a matter of cultural tradition. There is a tradition of respect for academic freedom in our society which recognizes that those in the academy should be permitted to pursue their studies wherever they might lead, free of pressure and intimidation on the part of vested interest, church, or state. Many court cases have transpired which testify to the constant challenge to this exercise of academic freedom. It has, nonetheless, worked well for American

higher education and for our country. But our universities are very vulnerable institutions, easily exploited from without and within. This is especially so when an issue of wide public concern, such as "obscenity," is raised, for it is not an issue that our society will leave to our institution or any other academic institution to decide for itself. Current law places this responsibility on the Courts, and we shall have to follow the prescribed legal process. If the film is found to be obscene, that is the law, and we shall abide by the law. Academic freedom cannot be used to violate the law once that determination is made.

Our future difficulty may arise from the fact that the present procedure for determining obscenity proceeds only on a case-by-case basis. We must exercise great care and restraint in proceeding in this uncharted sea, or we may have repetition of recent events. The students in the Erotic Art Society talked with me last Tuesday about their concerns for the future, and we share the hope that a solution can be found which protects students rights as citizens and yet avoids the damaging results of a continuous confrontation with legal authority. If we expect to have public confidence and support for academic freedom, we must choose our issues wisely and with proper concern for the rights and responsibilities of others within and without the academy. That is why, even though I am unwilling to impose my views upon others, that I am loath to base my defense of "academic freedom" on a film which has been determined as obscene in many parts of our nation.

I hope we all see the confusion in the logic which fails to distinguish between individual commitment and institutional commitment, but this error obscures much campus debate. For the University to speak, much less to act as a corporate body, is to require the acquiescence of its faculty and students to the University view--if not to their commitment to action. But for some students and faculty, commitment to their ends is more important than the end of personal freedom and academic freedom which hangs by a slender thread. I opt for a concept of academic freedom which respects your right to disagree with my views on this and other subjects.

Finally, the University must not deny its own accountability. While it may be self-governing and self-regulating to a high degree, it does exist in the society and its ultimate accountability must be to some group more representative of the broader public interest than the academy itself. No one in society is a free agent and while the reins on universities may be loose, they have always existed and this reality cannot be ignored. We, too, must observe the law and respect the rights of others even as we seek to change the laws.



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