

MEMBERS PRESENT: Sen. Tricia Smith, Chair Sen. Brady Adams Sen. Joan  
Dukes Sen. Karsten Rasmussen Sen. Jeannette Hamby Sen. Neil Bryant  
MEMBER EXCUSED: None

STAFF PRESENT: Joan Van Almen, Committee Counsel Kathleen Beaufz it,  
Legislative Counsel Julia Cooley, Legislative Committee Administration .  
These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation  
marks report a speaker's exact ~' words. For complete contents of the  
proceedings, please refer to the tapes. . TAPE 18, SIDE A

028 CHAIR SMITH: The first thing I'd like to do is because we had to  
suspend the 24 hour rule to meet this morning, I wanted to make sure  
that everyone had an understanding that we have been legal because of  
unusual circumstances we had in the building this morning with the old  
portion of the building closed off.

So I asked Julia Cooley if she would come this morning and discuss how  
she posted the notices and the official interpretation of whether or not  
they are legal.

036 JULIA COOLEY: I'm Julia Cooley. I am with Legislative  
Administration Committee and as you all know, we had a massive power  
outage this morning and so I am not certain exactly what time the  
parliamentary office has put us under, the one hour or the emergency  
rule but I think it was before 8:30 a.m. and I was approached by Chair  
Smith's office to post a notice of the sexual harassment meeting and we  
have been posting that, as you have probably all been stumbling by the  
different bulletin boards that I have out in the hallway. I spoke to Don  
Merrill, Secretary of the Senate, to confirm that what I had done would  
be legal and I have done this for some other meetings also but we were  
under the one hour rule and I tried to get adequate notice. I spoke to  
Sen. Hamby earlier but ~we were not able to run all of the agendas  
throughout the building for all the meetings like we have done with the  
members. Also as you all know, the crawl on the TV channel, is not  
operative either, so we are under emergency situation. Senate Committee  
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053 CHAIR SMITH: Any questions? 054 SEN. ADAMS: Again, I apologize for  
my ignorance, not being involved in it. I guess the question I have is  
have we posted the notice outside the Senate Chamber, in the press room  
and any other place reasonably designed to get notice to the public and  
other interested parties. Did we give written notice to all committee  
members who have not been excused? 060 JULIA COOLEY: Chair Smith, Sen.  
Adams, the locations you referred to in the building have been closed.  
Again, I have been running around the building and I cannot tell you for  
sure, exactly what time we were closed but we have actually evacuated  
all of the people from those areas. Basically acting on the conference  
committees, as you all know, we go into the one hour rule. So I  
immediately started posting things on the kiosk. Either Don Merrill,  
Sec. of the Sen. did not ask me, at that time, to be doing that but that  
is what I did. I believe that would be adequate notice given the  
emergency we are on. I have frankly never worked in the building where  
we have closed the old section of the building. 072 SEN. ADAMS: I am  
not familiar with the witness's qualifications. Would it be appropriate  
to ask Legislative Counsel if, in their opinion, we have met the  
requirements? 076 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: I think we

have here what we call in law, forced issue or a strong intervening force that has made it impossible to comply with the exact termination and obviously, we have two problems, posting outside the Senate door, assuming they would allow you in but they will not allow the public in to read that posting. Same thing with the press room, if you could get in and give it to the press room, the press can't get into the press room so I think they have done the best that they can as a substitute in making as many appropriate places this notice can be given. It is not going to take anybody very long, walking into this building to realize something is amiss, and to start looking for alternative meetings, because all of the committees that meet in the old part of the building are in trouble because the meeting place has been changed at the last minute, so notice has to be adjusted and I think as long as you made an adequate and consistent effort to meet the requirements, the fact that everyone of them technically cannot be met is not going to be an interference. You have done the best you can under the circumstances, to comply with the Senate Rules. 092 SEN. ADAMS: Could I ask a specific question that just crossed my mind? One of the reasons why that is so important. 093 CHAIR SMITH: Certainly, Sen. Adams. Ms. Beaufait, you might as well just settle in up here. I know that makes you happy but it saves you from having to get - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 3

up and sit down. 095 SEN. ADAMS: If there was a future case brought before this committee, would either the potential future respondent or potential future claimant have a significant case to challenge the process they were being subject to because of these unusual notice requirements? In your opinion, would we win that case? 100 BEAUFAIT: Sen. Smith, Sen. Adams, I think he would prevail and I would be a little surprised if anyone were to challenge on that account. This is not, remember, the instance where we are talking about notice to the parties involved but rather notice involving a committee preliminary action and therefore, as long as you have done the best you can to comply with the Senate Rules, under the circumstances, I do not think that is grounds for a challenge. I have to add, though, Senator, that whenever one is preparing a list of reasons one objects to anything, one usually starts with the color on which the paper is written and itemizes from then on out every other item that can be placed because over history and over time, sometimes some of these things have stuck, so I cannot say that nobody would ever say anything about it. I do not think it is a challenge that would succeed. The only other point within Senate Rule 8.16, which has not been met is the requirement that written notice be given to each of the committee members within the hour time frame, you were all given verbal notice, but not written notice and I think maybe what we need to do is find out if anyone objects to the fact that they did not get written notice within that hour. 125 CHAIR SMITH: No? O.K. Any other questions for Ms. Cooley? Thank you Ms. Cooley. 128 SEN. RASMUSSEN: Are we ready to go then? CHAIR SMITH: We are ready to go. 130 SEN. RASMUSSEN: Then I would like to just start with a couple of questions so that I understand why we're here. I did not call this meeting. It is my understanding the chair did not call this meeting, which means the rest of you all called this meeting. My perception was that the night before last we adopted rules and we now have those rules, so the Senate Committee on Sexual Harassment now has rules. I am not interested in revisiting the substance of those rules and spending another six and a half hours on any particular issue to do so. I lost some votes the other night. I know you will all remember that. I am

willing to abide by the majority's rule when I lose on votes. We can revisit these things endlessly and I do not wish to do that. So I have a concern about us revisiting any process, any substantive issues. I also would appreciate some assurances that this meeting is

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not being called for purposes of delay. I do not intend to accuse anyone of that but I would appreciate some assurances on that fact, if that is, in fact, not the case. If the meeting is intended to be sure that these rules do what we thought we were doing the other night, then I am not positive the meeting has to take place, right now, today, because we, it seems to me, have the power to deal with those problems in a less hasty way. My view is that we have rules now, regardless of what we do today.

137 SEN. HAMBY: In response, Madam Chair, to the good senator from Lane County, although I did not mark the time of my note to you, I am confident that it was done at approximately 8:03 a.m., letting the Chair know that after our committee meeting last night, which ended at 8:30 p.m., I took my two staff members out for a bite to eat and we worked in the restaurant until a little after 11:00 p.m. role playing. They had made some notes while I was in my evening meeting. One took the respondent and one took the claimant and walked through our pages. By the time we got to the restaurant for dinner last night, they had high lighted and made notes of some of their many concerns, as far as the earlier comments. Yes, I did write a note to the Chair and ask that, number one, we ask for a delay for an extension under the Senate Rules and to meet again and to insure that the document we bring down on the floor of the Senate, in fact, does not carry some of the typographical errors I found, some of the grammatical errors I found, some of the obvious holes and questions that were left as I walked through it again last night until 11:30 p.m. and I am truly concerned that as we take a vote on this committee and I have some real deep concerns about the conceptual motions that we made at the close of our last meeting. I am concerned that as we bring this document to the floor of the Senate, or pass this bill, all agree to what we have written, we not only bind ourselves to what I think is a poor process, as I look through it, but we bind every Senator on the floor of the Senate to what I think is an imperfect document, so that is why I asked the Chair for a delay.

193 CHAIR SMITH: Sen. Hamby, what are you talking about taking to the floor of the Senate? 914 SEN. HAMBY: Well, I earlier, 24 hours ago, or so, understood that we would bring this document to the floor of the Senate. It is my understanding now that we do not and that we simply vote to accept the document or not. Because of that committee vote, we bind not ourselves, but every senator to live under this document and the rules of the task force.

210 CHAIR SMITH: So your reason to have this meeting today was to go back over the substance of the rules, themselves, that we already decided upon when we voted for the rules the other night. I want to make that clear in my mind. Is that what you are interested in doing. - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 5

- 206 SEN. HAMBY: That is my wish, however, if it is the committee's desire simply to look at the conceptual motions that we left

following our last meeting, I will be satisfied with at least that much.

209 CHAIR SMITH: That being conceptual motion to modify the confidentiality rule and the conceptual motion to add a time delay clause and the conceptual motion to allow the Chair to rule on conduct within the hearings. 215 SEN. HAMBY: Unfortunately, I left my second copy that my staff high lighted for me, on the conceptual language, so I do not have that with me. I just have my notes. 218 CHAIR SMITH: I see your staff in the room, could they get that for you? So that we are sure that we know what it is you want to discuss. 220 SEN. ADAMS: I just want to make it clear that we are dealing with a very important issue. We all have very busy schedules but we also all have an obligation to take whatever time is necessary to do the job right. I have business obligations, I have family obligations, I have legislative obligations but I have an obligation to this project. When I receive a marked up copy in a committee meeting yesterday afternoon at 3:35 p.m. that if I do not get back by 4:00 p.m. that same evening that it shall be considered to be adopted by the Chair, in the note that I received, I am going to object. My objection is based on the fact that I want to do the job right. The current document has some obvious changes that need to be made within the framework of the process that we desire and that is my purpose today, to make sure we do that job right. 237 CHAIR SMITH: As I spoke to you yesterday afternoon, after you received that memo from my office, I told you that I agreed with you and it was not the intent of the chair or the committee staff to give you a half an hour to look over those rules, that the memo was written before we realized that we were going to spend all day fighting with the computer trying to get them printed. I wanted you to have that opportunity and that is why I told you that I wanted you to read them over in the evening and come back to me this morning with your comments on whether or not the conceptual amendments did, indeed, reflect what your understanding of those particular amendments was. I regretted and I still regret the fact that our computer system was playing with our psyches yesterday and that that particular delay occurred and that that happened. It was never my intent nor the intent of the committee at all to try to force you to not take the time you need to make sure those conceptual amendments are what you are understanding and what you voted for. It was also never my intent that we were taking another look at these to go back to the substance of the rules that we adopted as they were printed, with the exception of typographical errors, which we assured the committee the other night would be taken care of in the committee and with the assistance of

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Legislative Counsel and the formatting process that will naturally occur as these rules are printed. What we were interested in doing was assuring that these few conceptual amendments were, indeed, what the committee's understanding of them was. SO, I hope that today, what we can do is discuss those conceptual amendments if there are problems with them and I am more than willing and have always been eager to make sure that every member of this committee understands what we are doing here and they understand that what we are doing is legal and that due process rights of everyone involved are protected. That is still my intent and has always been my intent. 279 SEN. ADAMS: Chair Smith, I appreciate that and, again, appreciate the opportunity to have the time. I just want to make the point that it is important that we do take the time to

do this right. I appreciate your comments that you gave to me yesterday and opportunity to have the chance to do that this morning. 284 SEN. DUKES: I'm sure many of Sen. Rasmussen's concerns you and Counsel have worked very hard to get our input since that meeting the other night. It was my clear understanding all along that we adopt the conceptual amendments, we have discussions, that would be reflected in here, we would review it. I reviewed the one that I was presented yesterday, made my notes and then got the new one in the afternoon. We did that last night with clear understanding that it was not adopted and if we needed to discuss it, we would do that. I know of one particular area that actually, Sen. Rasmussen, I think it is not correct you are going to lose -- another one you didn't think you lost the other night. We agreed to those and I think it is important that it should be reflected. I do not think it reflects on anyone that were here. I am amazed that Counsel has been able to accomplish as much as she has accomplished in about 24 hours since the meeting. I am not interested in going into anything other than making sure that the issues that were already decided are as we decided them in those conceptual amendments. I would like to beg the committee that we give note to the fact that we all have other things scheduled for this time, that we skip the typographical errors, if they are clearly typographical errors, then we don't take up the time of the committee to discuss whether or not there is a dot on the i, and we stick to those conceptual amendments. 319 SEN. BRYANT: I'd like to respond also to Sen. Rasmussen's questions. On Monday, we adjourned about 9:30 p.m. and throughout the morning and that evening we spent about 7 1/2 hours going over another draft of these rules and there were many discussions and many changes and we all penciled in on our copies what we thought was taking place. Then at the end the committee unanimously, conceptually approved the rules 320 CHAIR SMITH: Excuse me Sen. Adams, we adopted the rules with a few conceptual amendments. We did not conceptually adopt the rules. I think that ' `!

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seems to be a point of understanding that all of us don't have. I'd like to make sure that everybody, right now, understands that. 334 SEN. BRYANT: What I was going to explain was my lack of understanding, again, placing no blame other than on myself because it is my own fault and I call it a rookie mistake. When we did that conceptually, I erroneously assumed that we would get another draft of these and have some time to think and read over it again, not just on the issues that we, conceptually, were talking about at the end of the evening but also on the entire rules. That was my mistake. 344 CHAIR SMITH: I thought I made that clear in the hearing the other night and I regret that, apparently, I was unsuccessful in making myself clear. 346 SEN. BRYANT: Again, it is not your fault, it's mine. As I stated, at that time, I was reluctant and concerned. But in going through this today and the items that are all described as conceptual, I think we do need to look at those. What do you want to do in the instance of a new question that might be raised that he had not discussed before, that has some relevance or importance. My concern is, I don't want to delay this any longer than anyone else but there is a couple of items that either we can describe as leaving holes or do not make sense and at some point, we need to address those in these rules that go beyond just the conceptual

things we were discussing and I would be curious to see how we would do that. ~. 365 CHAIR SMITH: First of all, we have passed off to Ms. Beaufait the copies that you all have given me. Those of you who have given me copies of the questions that we had, we passed off to Ms. Beaufait and she has responded to your concerns about them. Secondly, what I see we are bound by in these rules, in creating these rules, are three things. We are bound by our Senate Rule and what it says we must do. We are bound by due process rights to the extent that they apply in this process and only to that extent are we bound by those. We can go beyond that and the third thing is whatever four or more of us want to do within the context of those first two. So, like any Committee Rule in any Committee in the Senate, when a majority of the members want to change the rules, they can change the rules. The chair has no power to say, gee, I'm sorry, I don't care if you want to change these, we are not changing them. Clearly, we are sitting here because the majority of the members want to be sitting here and we will sit here as long and as often as the majority of the members want to. At this point it's kind of up to the committee. It is the Chair's desire to stick to the conceptual amendments that we adopted the other day and move on with the process. 395 SEN. RASMUSSEN: I kind of started this round table. Maybe it is not appropriate for me to talk again but I do want to respond to Sen. Adams. I'm not saying I'm not willing to put in the time. I don't want there to be any misunderstanding about that and I am not saying I am not committed to making . . . - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page ~

sure this is done correctly, because I am committed to that. What I am saying is that I understood we had adopted rules. We can change those rules as the Chair just pointed out. Sen. Bryant and I had a number of shared concerns the other night. Maybe we need to revisit some of those, but what I don't want to do is have the process speed up in increasingly high pitched tones and hope that we get a good set of rules out of that process because we are not going to. My view is, we have a set of rules now. If they have typos and form problems, those can be fixed without us sitting here. If they have substantive or problems actively reflecting what we did the other night, then let's come back and do that. But frankly, when I got home at 10:30 the other night, I wasn't happy with these rules when I left and I was even more unhappy when I got home. I came back the next morning and we were out late. I haven't had a chance to look at this. I don't want to sit here today and look at these and try to fix those problems. The point that I think my colleagues are trying to make is let's think about these. That's what I hear Sen. Bryant saying. That's what I hear Sen. Adams saying and I'd like that chance too. 430 CHAIR SMITH: We can do whatever the majority of this committee wants. My feeling is that it is now April. We began discussing this in January. We at some point, will adjourn. No action can be taken through this process until the rules are adopted, although an argument can be made at this point. Rules are adopted, so anyone who wanted to bring a charge forward could do so under these rules as they are. I don't know what the committee's desire is, at this point, but if four of you want to tell me, we'll do it. 445 SEN. DUKES: I think you are entirely right and that is why I walked into my office this morning to call Counsel and then ended up in a discussion other than that but related to these. Because by 9:00 a.m. this morning, it was my understanding, we either voice those concerns or these things were going to the Senate President. They are adopted, some of these are final under them and in viewing what I have here now, I'm looking where it says that

what you said is called something completely different but that change has never been made. I can do that with Counsel. That can be taken care of it. A change that we made the other night that just slipped by, that's fine. I think that there is a glaring difference between what we adopted the other night. TAPE 19, SIDE A

001 CHAIR SMITH: If it's alright with the committee, how about if we begin the first conceptual amendment is within the confidentiality provision. Ms. Van Almen, can you go through those for the Committee?

003 SEN. RASMUSSEN: I need to go find out what's happened to Bill. I'm supposed to be carrying a caucus right now, so if you'll excuse me for a few minutes, I'll be back.

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005 CHAIR SMITH: Thank you Senator Rasmussen. The verification statement number 4.

009 VAN ALMEN: The verification statement number 4. Procedurally this was developed chronologically by page number. I have included the statement that I believe was written by Sen. Bryant and mod)fied by the committee. The verification statement shall state; I, do hereby verify that the above statements are true to the best of my knowledge. There was additional language citing statute, which the committee, I understood, discussed in the end, to be deleted and therefore, it was deleted. 019 SEN. BRYANT: Madam Chair, a question for Kathleen on the word verify in the verification, would it be better to use the word swear or affirm, or does it matter. 024 BEAUFIT: I don't think it matters. 025 SEN. HAMBY: May I ask Kathleen, would it be better, do you think, Kathleen, to further on the line, verify that the above statements are true and correct, to the best of my knowledge. 029 BEAUFIT: Sen. Hamby, usually the true is always just all alone. There are to the best of your knowledge is also correct. 032 SEN. HAMBY: So true is usually the phrase used to cover that. You are not going to verify that the statement is true if it is incorrect. My concern from that stems when we go back and amend an allegation because, I see a distinction between true and correct. When we allow amendments to the original allegations and the response by the respondent to each one with the notion that no, I was at such and such a place during the time that you allege and then the claimant can come back and say, well I just found that I am incorrect. 045 BEAUFIT: I think that is exactly why they use the word true. You may be in the depth of your soul and sense of honor that you swear that something is true and you later find that to your horror and consternation that you had the wrong date, or whatever it was, so truth is your belief about it as much as your other recommendation.

053 CHAIR SMITH: Any other questions about this part? Would you like to vote on these individually? 054 SEN. HAMBY: I think that if Counsel believes that we have stated something inaccurately, or you do or some other member of the committee does, then we can go in and clarify that.

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058 CHAIR SMITH: Ms. Almen, the next page, number 3, paragraph 6. The chair of the Committee on Sexual Harassment is authorized, upon a written statement showing good cause, to enlarge any of the time frames indicated within these rules. That was the statement that I read to the Committee that was hand written at the time of the meeting. I wrote it out in handwriting and read it out loud and I understood that this language reflects that hand written statement and I did not remember any objection being stated to. 066 VAN ALMEN: Next, paragraph 8, was changed to reflect, again, Sen. Bryant's request that the committee agreed with to verify this statement and because this was an amendment. (Reads all of paragraph 8). The committee discussed the issue of how would a complaint proceed forward and that led to discussions of amendments and what would be included within a complaint led to discussions about amendments. Therefore, the committee had decided and I brought back from the morning meeting, an afternoon addition to that statement that included the definition of the complaint. The definition of the complaint that the committee was going to proceed with was printed for the committee and what the committee read was that the complaint would consist of the original charge of the party and any amendments. That statement forced me back to decide about how you were going to deal with amendments. The committee did not give the time frame. I put the time frame in there as a way to help the committee with that issue, which was there were concerns expressed by the committee, for example, how will we know what, exactly constitutes an additional allegation to be included in the complaint. Does, and in attempts have respondents had actual notice of what charges are, it was a way to get at the issue and the committee, I thought, agreed that the complainant should be allowed to amend and given the fact that things may come up later for the reasons that the committee discussed. So in allowing the committee in attempting to balance that problem and allowing the practical problem that the committee did not address and that I was forced to address, in writing the language, which was, how long do you get to do that. Actually, I believe we discussed not allowing this process to occur after the report. During the investigation the committee wanted an allowance for an amendment up to the point where the report would not be messed up. The problem with that was, Madam Chair, that in doing that the respondent would still be entitled to notice and ability to answer the amended charge. I looked at the time frames that you had discussed for doing an investigation, which gave you power to enlarge. The Chair may have wanted to do that upon the need to amend because right now it is 14 days. The 18 calendar days was taking into account the 4 days for the investigation plus the 14 days, that was 18 working days, so I chose calendar days to bring the amendment within the time frame of the investigation, number one and to permit the respondent to have notice and adequate time to respond and for the investigator to not have gone away some place and finished a report and still be able to come back and investigate the amended charge. That was my thinking on putting those time frames in to meet both the needs of the

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complainant that the committee expressed concern about and the need of



the respondent to have adequate notice and be able to come back and the practical problem that you did not want to reinvent the wheel with new investigations and the cost, etc., and it will allow the investigation to continue on those allegations without redoing everything and that was my thinking on times. The committee did not give me those times, I just came up with them. 119 SEN. ADAMS: I have two things on that. One is that the investigator time frame is not working days, it just says within 14 days. There are four working days for the president to appoint an investigator and you could run into a potential problem of having 18 days, calendar days occur in these circumstances. I guess this is an example, perhaps, of the necessity for going through and doing this so we do not run into a logistical problem. I would suggest that either we change the 14 days for the investigator to calendar days or make this a 17 day period. I have one other issue in regard to this. Again, it is a good example of why I think it is necessary to do this today. That is, as I read this, it says a charge is permitted to be amended once so that the complainant could only make one amendment to this process. In discussion with some of the other senators, there may have been some confusion on whether there could be multiple amendments to this by the complainant. This would say the complainant only has one opportunity, or it appears to me to read that the complainant only has one opportunity to make that amendment. I think there may be some confusion, again, amongst us, as to whether or not that was the intent of the conceptual change that we were making. So I guess I would ask on those two things, either that we change to 17 days on the calendar days or we put calendar days on the investigation and that we all make sure that we are agreeable that the complainant could only make one amendment. 145 CHAIR SMITH: Sen. Adams, it was my understanding that we intended 14 working days in the time frame under which the investigator would operate. The investigator would have 14 working days to investigate the charge and prepare the report. Is that the understanding of the committee? 150 SEN. ADAMS: It's O.K. by me. 152 CHAIR SMITH: How do you feel about it now, if you don't remember?

153 SEN. HAMBY: As long as it pencils out and it doesn't take forever and it doesn't short change the opportunity, I'd be in favor. 156 CHAIR SMITH: O.K. Does anyone have any objection to 14 working days. That would be on page 9, number 4, 14 working days. O.K. and as to Sen. Adams point about one amendment, Ms. Van Almen, you are right, Sen. Adams, we did not discuss one amendment. Ms. Van Almen, I don't want to put words in your mouth. \_4

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164 VAN ALMEN: There was no real concrete discussion how an amendment would happen. My experience as to how an amendment would occur is that, given the things the committee talked about is that new things that had not been remembered before that would be enough to constitute an actual amended charge would be one way. The other thing would be things that the person was, for other reasons, unable to talk about and bring forward and decided to do that would also be another occasion and that in doing that there would have to be some cutting off point, where unless the committee was willing to look at sort of doing this first

investigation on the original charge forever and I'm sure it wasn't. The committee also talked about new charges, in other words, being cut off and the fact that one did not include an allegation here as long as you were within the time frame would not preclude you from coming back at a later time, as long as your built in statute issue was met. But as a practical reason, as a cost factor reason, certainly the desire is to get everything that you can do in one proceeding. The concern that you have, Sen. Adams, would not preclude someone from bringing a different charge all over again as opposed to amendment to the same charge. The person wouldn't be out, it wouldn't be very convenient and it wouldn't be a fun thing that the committee would want to have to do and it would certainly add cost but you would not be precluded from doing it. The hope in putting language in the rule that it be allowed once, if a person making a charge finds himself/herself in the midst of an investigation and things are coming into their consciousness that were not there before and they want to add those things, then they have a specific period of time in which to do that and if there may be other things, we can wait right up until the last day and make sure they get everything in that amended charge that they can dredge, then have a definite cutoff point and say if there is anything else beyond this, then you have to go through this process again. 201 SEN. ADAMS: Madam Chair, I'm not uncomfortable with this, in fact, I'm comfortable with it. In fact, I like the idea. I just wanted to be comfortable that the rest of the committee members were comfortable. 205 CHAIR SMITH: Well, I don't know about the rest of them, Senator. I appreciate your taking care of me. Does anyone have any objection to this part? Senator Hamby? 206 SEN. HAMBY: No not this part. I'm back on page 6. As members agreed that just the question, not necessarily today, Ms. Chair, but tomorrow or however many years down the road, could that point 6 be politicized. 215 CHAIR SMITH: By having a Chair who wishes to extend this forever? Sen. Hamby, in my opinion, this entire process from beginning to end, no matter what it says or what it does can be politicized. And maybe somewhere down the road, after we are all doing something more fun, and someone else is doing this it will ~ ~. These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993-Page 13

be politicized. I do not believe it is possible to write a rule to eliminate politics completely from what we do. SO, it is possible but I think that under this process, it would be very difficult to do without the world looking at you and saying why are you delaying this process. 227 SEN. HAMBY: My thought was that the decision be made by the committee and perhaps there would be less of an opportunity. 230 CHAIR SMITH: The only problem with that, Sen. Hamby, would be delaying the time frame within the preliminary investigation, unless you wanted the committee to come in and discuss, publicly, what the cause is for that delay and that would be the requirement. 235 SEN. HAMBY: No, I just share a concern. 244 CHAIR SMITH: Number 8, are we comfortable with number 8? Silence is an answer in the affirmative? O.K. Number 9, page 3? (Reads number 9). 253 VAN ALMEN: Again, that was my attempt to respond to the need for the respondent to have the opportunity to come back and have the notice provision and be able to respond to the charge. 256 CHAIR SMITH: Alright, is everyone O.K. with that? Number 10, is, again, another extension of that. It states the obvious. (Reads number 10). Are we O.K. with that? 262 VAN ALMEN: There was much discussion by this committee on confidentiality. I made no changes. We came back to that meeting in the afternoon, with the idea, again after much discussion that number one, the committee was firm that it had decided

to change number 7. (Reads number 7). That, actually, is not a conceptual amendment but I only bring it up just to remind the committee that you came back with that idea and that discussion in your afternoon session. You also, then went forward with the concern and the discussion about how the committee would deal with discussions among one another and among the full body and any limitations that this committee would have on doing that. The committee discussed a lot of things about whether or not there were, in fact, limitations. There was a concern that the committee, I though, attempted to maintain the integrity of the membership of this committee and wanted to make every effort they could to do that. So, one of the reasons the committee had decided that they would receive notice of a charge, again, allowing the committee to maintain its integrity, that they would get notice that a charge had been filed and then allow themselves to refrain from internal discussion and from being approached by other persons, other members, other employees and the media. Then the discussion flowed that there was a concern, what about the full Senate.

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The full Senate would ultimately be voting on the matter potentially and in looking at the potential problems that may arise or could arise, as I recall, Ms. Beaufait came out as Legislative Counsel and told the committee that it would be very difficult and in fact, would not be able to control statements made by members outside this process, that this committee could not make a rule that would then apply to the entire Senate body. The committee still expressed a need to maintain the integrity of the process as it would apply to the full body. Therefore, that caused me to take those concerns and come back with number 6, with an attempt. I had read language to the committee, which one of the members wrote and I think it was Sen. Rasmussen. His hand written note was parties and members of the Senate shall refrain from private discussion touching upon the charges or complaints or the facts related thereto, with any members of the Senate until such a time as the Senate acts. The committee then amended that after Ms. Beaufait's comments, as I understood it, to take out the part about members of the Senate. That still left me with deciding what language you would use to deal with trying to maintain some control about the full body. Therefore, I wrote it this way. (Reads first four lines of number 6, unedited form). That sentence came out of, again, the expressed concern that we do not want to be placed in compromising situations. It would allow you them, to make a statement in whatever way was appropriate or comfortable for you and in anticipation that there would be any number of those situations which could arise so I tried to make it broad enough to encompass all of those things and to allow you that flexibility with recognizing that you only had a certain amount of control. Then, it states (Reads last two lines of number 6). That, again, came out of the afternoon discussion where you specifically said, we want to make sure that we do not write ourselves out of the ability to do something the rule contemplates, i.e., file a minority report, discuss it with one another, which minority reports would inherently require you to do and that language reflects that.

342 SEN. ADAMS: Three points, one when Counsel redrafted this, they left out touching on the subject matter, which we did discuss at that meeting about the concern in the way it is currently worded and was

originally worded that I could not have a discussion with another Senate member. Sen. Rasmussen was able to draft, touching on the subject matter so that there was a qualifier that would allow me to talk to my colleagues privately but not on this matter. I would suggest that that needs to be reincorporated back in. 356 CHAIR SMITH: We can certainly do that Sen. Adams. Again, because of the discussions about what the power of this committee is and what we can do, all we can do in our roles is regulate conduct with regard to the business of this committee. We do not have the power, any power to tell any of us, or anyone else what to do on a subject that does not pertain to the issues coming before this committee, so we can put it in if it makes you feel comfortable but it is not necessary.

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364 SEN. ADAMS: Madam Chair, it does make me feel comfortable. How do the rest of you feel? Do you want it in there? O.K. 366 SEN. HAMBY: This is not any of the conceptual amendment material, however, help me remember ... 371 CHAIR SMITH: Excuse me, Sen. Hamby are you talking about number 6?. Let's stay with number 6. Sen. Adams, touching parties and members of the committees shall refrain from private discussions with one another or other Senate members or employees, touching on the subject matter. 377 SEN. ADAMS: Why don't we say concerning rather than touching? 377 CHAIR SMITH: Concerning any pending charges before the committee. O.K. Before the comma, second line, after employees, concerning any pending charges 394 VAN ALMEN: Do I continue with the language not otherwise designated by these rules? 396 CHAIR SMITH: Yes. 396 SEN. ADAMS: The second thing is, I just want to make sure of our intent. The way that I read that then, that I, as a committee member, shall not have private discussions concerning any charges but I may have public discussions in regard to those charges. In other words, I may respond to the media, not on the specifics of the allegation but I may acknowledge that there have been charges filed. I do not know if that is the intent of the committee but that is my interpretation of what this section provides me to be able to do. 412 CHAIR SMITH: We can say public or private discussions. 412 SEN. DUKES: We had discussions the other night about committee members and that we should not be out talking to the press either and I think it may be in another section, simply an oversight that it didn't get picked up here. But I noted that as I went through, too, we can't talk to the parties and we can't talk to each other but we can talk to the press. 424 CHAIR SMITH: We can say public or private discussions and that ought to take care of everybody. 426 SEN. ADAMS: I just want to make sure when we do that and I am comfortable in doing that by the way, that we have also, in this language directed that the parties are bound by this. It is my understanding that our definition of the parties are that that includes the respondent, complainant and the President of the V ~ ,!

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Senate and therefore, it would be improper activity for either respondent, complainant or the President of the Senate to have any

discussions public or private in regard to any potential charge. This is one of the reasons why I wanted to have this meeting. This is an extremely critical point that we need to be all clear on before we implement these rules.

442 CHAIR SMITH: Is it your understanding or your belief that we can put requirements upon the Pres., well we're putting other requirements so I guess we can put this requirement on the President as well? Do we consider the president to be a party and Ms. Van Almen.

449 VAN ALMEN: I'm not sure that I consider the President to be a party but under Senate rules, is there not a provision, still, that the President is a member exofficio of all committees.

453 CHAIR SMITH: Yes, he is a committee member.

456 VAN ALMEN: I see one potential problem with that, given the fact that the President as an employer, in his capacity as an employer may have a different responsibility, depending on the situation, given the authority mind. So your need to consider that.

463 SEN. DUKES: We all have that potential problem. It could be any of our staff that could file a complaint.

466 Van Almen: That's true, Sen. Dukes. I'm thinking though in terms of whatever the responsibilities that the Senate President has in carrying out

TAPE 18, SIDE B

001 VAN ALMEN: ...responsibilities as an employer to remedy situations would require that he, if it were now, would have a discussion. If the appointing authority, is what I'm thinking of, I can't remember, from our chart, whether we are officially appointing authorities for our staff. I think that each of us has the real distinct possibility of running into that. I am assuming that, in the case of one of us, we would probably exempt ourselves from the entire situation. The Senate President, unless it is immediate staff is further removed from that and could not likely turn this whole thing over to the full Committee. If it was simply a Senate employee, it would exempt the Senate President.

016 CHAIR SMITH: Yes, we can, or we can leave the rule as it is. I'm not sure it is a problem as it is. What do you think?. Tell me, if you want words, what they are. I am comfortable with it as it is, with the changes you have made.

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020 SEN. ADAMS: Madam Chair, if we are comfortable, I just want to state this one more time. The Senate President, the respondent, the claimant and none of the Committee members may have any private or public discussion with one another or other Senate members or employees concerning any charges before the Committee. Is that for the record, the process that we are going to operate under? 028 SEN. RASMUSSEN: Here, and perhaps earlier, we need to be talking about the facts regarding any charges, because that is what we are talking about, I think, Sen. Adams.

031 SEN. ADAMS: I think that is a good point, because, the way I read this, and again, I'm not uncomfortable with whatever we adopt. I just want to make sure that I understand it so I can make sure my conduct conforms with it. The way I read this is that I cannot even acknowledge that there has been a charge filed, let alone talk about any of the specifics in regard to the charge. I am not uncomfortable with that.

035 CHAIR SMITH: Yes, I thought that was our intent. 036 SEN. ADAMS: I have absolutely no problem with that. I just want to make sure, for the record, that we are clear as to what our intent is. Madam Chairman, this is just for my own clarification. There is a sentence that says Committee members will announce the policy of confidentiality to other Senate members when necessary. Is that any implication that it will require me as an individual Committee member to remonstrate on the floor to other Senate members that I cannot talk about something, that I can't tell them that might not have been happening. 044 CHAIR SMITH: NO, Sen. Adams, this does not require you to do anything. It gives you a tool to use when you think it is necessary. 046 SEN. BRYANT: Just a simple suggestion to maybe clarify that rather than announce, then explain that you do not have the affirmative to point out ... 048 VAN ALMEN: The only reason, Sen. Bryant, I thought of the word explain, except the word explain sort of presupposes more talking and so I was thinking of something that you could just give the signal that says, hey!, then everyone is sort of on notice that I do not want to give a long explanation. I just want to say, literally announcing, there is a policy of confidentiality that that should be able to preclude is, don't take this any further. That was in trying to help you deal with the bombarding of people wanting more information. 057 SEN. BRYANT: To me that is an explanation, to display the policy of . 4

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confidentiality. 058 VAN ALMEN: O.K. Does the Committee want the word explain then? 059 CHAIR SMITH: I don't know, does the Committee want the word "explain"? 062 ?? Would "state" be better? 062 CHAIR SMITH: Committee members will state the policy of confidentiality to other Senate members when necessary?. Is that correct? Silence is ... 065 SEN. BRYANT: This does not preclude me from talking to staff Counsel? 068 CHAIR SMITH: No. Although, we are all precluded from talking to Counsel during certain portions of this about knowledge Counsel may have about specifics of allegations. We are precluded from doing anything other than what we are allowed to do within these rules. 072 SEN. BRYANT: That brings up an interesting point. The Senate President, the respondent, the claimant, committee members may not have any public or private discussions in regard to the charges but may the Committee Counsel? 076 CHAIR SMITH: Well, all I can do is tell you this, that in applying the word Counsel to this, that I guess you could state it out loud, the Senate members, who are attorneys, can understand this. It imposes, as an obligation, when you consider yourself a Counsel that you automatically cut yourself off from those discussions. That you police yourself and say that you know the limits. You are presupposed to know those limits and that those limits would not include inappropriate discussions, but if the committee is not comfortable with that, then you may want to say something in writing, out loud, that would say, in no situation parties, and members of the committee and Committee Counsel if you would like. 088 SEN. DUKES: I don't think you can do that because

Counsel will have to talk to the claimant. 090 CHAIR SMITH: It says not otherwise designated by these rules. 091 SEN. DUKES: I just sort of figured that any staff around here who gets too carried away and goes to the press, in this committee, isn't likely to be working for the committee much longer, so I would think that is the best sanction that you have. That's my feeling. 096 CHAIR SMITH: Does anybody want to add anything?. Sen. Bryant, are you comfortable? Sen. Adams, are you comfortable.

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097 SEN. ADAMS: Yes, I just want to make it clear that the press will not be able to determine that any charges have been filed until we get to the complaint stage. 100 CHAIR SMITH: It looks to me, Sen. Adams, under these rules, that the only way that would occur is if someone violates the confidentiality clause. 103 VAN ALMEN: Ms. Chair, he just said until it gets to complaint stage. That would be right until you got to the report stage because you said at that stage, which may not be the complaint stage. 107 SEN. ADAMS: As we go through this, there is a potential hole in that shield and the hole in that shield is that when we talk about an employee, we notify two people, we notify the respondent's supervisor and their appointing authority. I have some questions about what it is we are notifying them of, but we have no confidentiality requirement. If somebody wanted to find out if there was a charge, what they would have to do is find some respondent's supervisor and appointing authority in order to be able to ask them and there would be no restriction on those individuals to indicate whether or not there has been a charge. 120 CHAIR SMITH: Ms. Beaufait, do you have a reaction to that? 120 BEAUFAIT: A visceral one maybe, and that is to simply say that you supply the information to those people on the condition that they will observe the confidentiality. If they tell you no, I plan to call a press conference if you tell me anything then you do not give them the information. That is one way it's handled in some other instances. Your rule doesn't specify that. Madam Chair, I would think that we can add, there is a couple of different places where we send out information and I think that we can simply add something that says there is an understanding of confidentiality, or something along that line, to where we have asked them. Obviously, we have absolutely no control over some of these folks. I think it is reasonable as we send these things out to people to simply add something in the cover letter that says 136 CHAIR SMITH: They all get a copy of the rules along with whatever else they get and it is within the rules, the confidentiality clause is within the rules. We can put language in here to indicate that when the notice goes to the appointing authority of any party, that they be told in big letters on the cover that this is a confidential matter and they are not allowed to talk about it, if you'd like, although it leads to the question, what are you going to do if they don't, because we have no control over the appointing authority or anyone within these rules. We are not addressing the appointing authority. We are notifying them to allow them, - we don't even have to give them notice but we are doing it as a courtesy so they can comply with the legal requirements of a safe working environment. , These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 20

150 SEN. ADAMS: Are we ... in discussing that at this time?

153 CHAIR SMITH: Actually, no we are not but we can be at some point.

155 SEN. ADAMS: There is a release problem with that.

156 SEN. DUKES: I just have a quick technical question. When someone wants to file a minority report, they give notice before the end of the meeting. Does everyone who intends to join on that minority report, or can someone join on that minority report later, who has not given notice?

163 BEAUFAIT: Sen. Smith, it has been my understanding that when someone served notice of a minority report, that as long as the individual shows up later and signs the same minority report and not a different minority report, that when notice of a minority report - I've heard some members say I'm going out to find someone else to join this.

167 SEN. DUKES: I only asked because the language here says the policy does not preclude the ability of members who have given notice of intent to file a minority report and I wanted to make sure that if Sen. Bryant decides to file a minority report and Sen. Hamby decides to join him later but does not give notice and Sen. Bryant does that they can have that discussion later, if they need to, to be able to file the report. We don't need to write the language now.

174 CHAIR SMITH: Does that satisfy that, Ms. Beaufait, in your opinion.

176 BEAUFAIT: I think it just says the ability of a member has given notice to file a minority report to discuss the matter for that purpose. That would clear that member in discussing it with anyone else, using the word member used to me one time, if I am recruiting someone else to cosign on a minority report.

181 CHAIR SMITH: Alright, is everybody comfortable with that change? Apparently so.

184 SEN. ADAMS: Madam Chair, yes, I'm on page 7.

187 CHAIR SMITH: Does anyone else have anything else on this page?

188 SEN. RASMUSSEN: Would someone read to me now, what is this paragraph 6 we are talking about? Would someone read to me what that says

191 CHAIR SMITH: Reads paragraph 6, COMMI~EE RULE 18.02.03.

199 BEAUFAIT: I think where it says other Senate members or employees, I think,

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at that point, you need to add the media. Otherwise your public and private discussion does not include the media, it only includes one another, Senate members and employees. So I think you need



representatives of the media after the word employees. 210 CHAIR SMITH: Does the committee agree with that change? Yes. Silence is assent. "or employees or representatives of the media concerning any pending charges not otherwise designated by these rules". 221 SEN. RASMUSSEN: I am not willing to have my silence be acquiescent because you are going to have some silence from me today. We have now made this process secret, when we started out making it public because the parties cannot discuss it and I am a little concerned about not being able to discuss, at least to ourselves, the fact that a charge is pending and that's all I will say. 232 CHAIR SMITH: Would you like the record to register you as objecting to this particular clause, Sen. Rasmussen?. 234 SEN. RASMUSSEN: Yes. 234 CHAIR SMITH: O.K. It does. Are we finished with this page? 236 SEN. HAMBY: As an amendment to the remarks earlier, I really question whether we can silence, most especially parties, if the committee prefers to go that way, but I ask you to go up to paragraph 1, in the second line there is "answer, or" I did not think the committee meant an either or but, in fact, that should be an "and". Am I wrong? 247 CHAIR SMITH: NO, you are right. It is not an either/or it is not an and/or, just "and" information. Does the Committee agree with that? I believe so. 253 BEAUFAIT: Could I ask to be excused? I have a commitment to get some amendments to a committee that is meeting this afternoon and I will return just as quickly as I can. 256 CHAIR SMITH: Certainly, Ms. Beaufait, we will miss you while you are gone. 257 SEN. DUKES: Is there anyone on our legislative counsel that you could send in? 258 BEAUFAIT: I'll be back in about 15 minutes. 260 CHAIR SMITH: Shall we take a 10 minute break, while Ms. Beaufait delivers her amendments.

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262 SEN. DUKES: Is Mr. Clifford available? It is the lunch hour.

263 CHAIR SMITH: No he is out at a meeting someplace. Are we finished with this page?

267 SEN. BRYANT: Madam Chair, I have to be out briefly too, for a prior engagement that I have to attend. The committee, of course, can go ahead. You have my written concerns and I will get back as soon as I can.

272 CHAIR SMITH: How long will you be gone Sen. Bryant? 272 SEN. BRYANT: I would say, probably until 1:00 p.m.

273 CHAIR SMITH: Would you all like to recess and go get some lunch?

275 SEN. ADAMS: Recognizing we all have conflicts, could we make the break a shorter break? 279 CHAIR SMITH: I'd love to but it does not do us much good, Sen. Adams, if all the members are not here and we are just going to have to keep repeating this process.

281 SEN. ADAMS: Can we leave our things in here?

281 CHAIR SMITH: Yes, as far as I am concerned. We'd better take our stuff because we do not know if we will be back here. We will let you know where we will be if they boot us out of this room. We will meet at 1:00 p.m. and we will be in recess until then.

290 CHAIR SMITH: I will call us back to order. We are at NOTICE OF RIGHT TO FILE A CHARGE. I have no changes on this page or the next page, which is the second page of the notice and no conceptual changes until we get to NOTICE TO RESPONDENT OF CHARGE, paragraph 3.

305 SEN. ADAMS: Again, not wanting to reopen, but it seems to me that there may be some minimum logistical problems on paragraph 2, b. That is, first of all, the Notice that is given to the respondent's supervisor and appointing authority, does not refer to who the respondent is, so what would happen is that a respondent's supervisor, in appointing authority would get information that there has been a claimant but they would have no idea who the respondent is.

319 SEN. HAMBY: Page 7? Could we go back to page 5 first?

323 CHAIR SMITH: I don't show any conceptual amendments on page 5. . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. . Senate Committee on Sexual Harassment April 8, 1993 - Page 23

324 SEN. HAMBY: NO, I was just going to call your attention to something that occurred to us. First of all, Line 4, I hope should read, "These are the types of conduct which are experienced by you as;" 329 CHAIR SMITH: Examples of specific behaviors which may constitute sexual harassment include: ... 4. Those are the types of conduct, and which if experienced by you as; 344 SEN. HAMBY: Now, may I bring you up to point 3. Take a look at that. I think it's just a technical but it reads as though, or does it read as though every one of those examples must occur? 357 CHAIR SMITH: NO, it does not read that way to me. NO, it does not and that was not the intent. Does the Committee feel some discomfort about that? 363 SEN. ADAMS: Madam Chair, to be consistent with paragraph 4, where we put or after each of the bullets, we could do the same thing. 366 CHAIR SMITH: Why don't we just leave it? 367 SEN. HAMBY: Well, just so it is clear on the record that we certainly do not expect all of those things to occur, that's all. That's all I wanted to clarify, for the record of legislative intent, if nothing else. Then, take a look at improper questioning of your private life. Let's say, someone asked you what did you do this weekend? And your response was, I joined the OCA, then drop down to 4, where it says it could be used as the basis of decisions which affect you. So if we are not dealing with sexual harassment. 381 CHAIR SMITH: We are not dealing with sexual harassment, and that would not be experienced by anyone as an unwelcome sexual advance, or the other ... 386 SEN. HAMBY: I agree, and when I realized that last night, all of a sudden, it occurred to me that we have no where in the previous pages, identified, is that a sexual harassment. 395 CHAIR SMITH: I "What did you do this weekend, I joined the OCA", using your example, I'm sorry Senator, are you suggesting we lift all the things that are not sexual harassment? 397 SEN. HAMBY: No! No! No! What I am saying, when I saw that, it was only because of OCA's meeting last night, that stuck in my head, it dawned on me, we have no, or help me find out the spot, the checkpoint if you would, as to who decides whether this is.

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407 CHAIR SMITH: I will show that to you. Counsel decides initially, I will find that page just a minute. 412 SEN. HAMBY: Do you remember, Kathleen, where that is? I'm thinking of the Senate rule itself, 18.01. 414 CHAIR SMITH: It is on page 2, under 3, d, the Committee Counsel shall meet with the person filing the charge to assure that the charge meets the basic requirements of the rule; and this rule deals with sexual harassment. 431 SEN. HAMBY: O.K. So that's what I needed to connect in my own mind. 436 CHAIR SMITH: Anything else on page 5? 437 SEN. HAMBY: I think that was it. 438 CHAIR SMITH: Back to page 7, Sen. Adams. 439 SEN. ADAMS: Madam Chair, one should be sensitive not to get into areas that were not part of the conceptual discussion that we have had. 443 CHAIR SMITH: In terms of modifying substance? 444 SEN. ADAMS: But I do have a significant problem with 2, b.

446 CHAIR SMITH: 2, b, why do you have a problem with that? 449 SEN. ADAMS: I have two problems with that. One is, that when you read it, it says that the only thing that they get is a notice of procedure and rights. If you turn the page, you have a copy of what the notice of procedure and rights are. What this is sent to is the respondent's supervisor and appointing authority but the respondent's supervisor and appointing authority has no knowledge of who the respondent is.

463 CHAIR SMITH: We have a list of the people in here, who get a copy... 465 SEN. ADAMS: But this goes out before the, not the charge, they get a copy of the report. 469 CHAIR SMITH: Are they notified, aren't they notified? 473 SEN. ADAMS: She is explicitly prohibited from notifying them. So I am a supervising agent, I receive something that says Joe Blow filed charges, but it doesn't say who against and now I am trying to guess, what does this mean to me?

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I think it gets back, if I could, to a concern that Senator Rasmussen had about confidentiality, thinking about his comments and in regard to this, I have that same concern. I think that perhaps, maybe, this confidentiality position we have taken is too extreme and I would suggest that maybe we need to modify it to make it workable. This is, I think, an example ... 485 CHAIR SMITH: It is a charge and the point of notifying the respondent's supervisor is to assist the supervisor or appointing authority in complying with the legal requirements of a safe working environment. Remember we talked about how there are two processes that must occur when sexual harassment has occurred and one of them is the rule process, which deals with the Senate's decision about whether or not a Senate rule disallowing sexual harassment has been violated and if so what the consequence of that violation is and the other process is a process which we are not involved in and that is the employer or appointing authority's Tape 19, Side B

004 CHAIR SMITH: legal requirement to provide a safe working environment and that legal requirement existed prior to us ever bringing up the possibility of a sexual harassment rule and will continue to exist separate and apart from whatever we do. 009 SEN. ADAMS: I think that is an excellent thing for us to do and I think that we should take that responsibility. I have two concerns in regard to that. One is that as tightly as we have defined that confidentiality rule, we may have

prohibited the parties, respondent and complainant from having any discussions in regards to this issue. Secondly, we are sending this to the respondent's supervisor and appointing authority but not telling the supervisor or appointing authority who the respondent is and third we have not sent anything to the complainant. That may be where this should be directed. I don't want to bring this up as a substantive issue. We have not sent to the claimant's supervisor and appointing authority that there may be a situation that they should be aware of to provide the protection that you just described. In other words ....

020 CHAIR SMITH: I understand what you're saying. 021 SEN. ADAMS: What I'm getting at is, I guess, I don't want to go back. I don't want to bring this up if the committee says that we can't get into substantive issues as this is not within the conceptual items. I am going to be extremely uncomfortable, in fact, I am much uncomfortable now with the confidentiality where Sen. Rasmussen is. In fact, I think I would like to register my objection to the confidentiality at this point in time, on this. I am going to have a real hard time, if we can't get into this issue and try to resolve it.

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028 CHAIR SMITH: O.K. We did not include specific not)fication because we assumed that when we not)fied the Senate President that the Senate President has the ultimate appointing authority, would take that up. Does the committee wish to change the confidentiality. We are talking about number 6 on page 4. Does the committee wish to change any of the words on that page and if so, what changes would you like to make? 036 SEN. ADAMS: I would like to change and I am not exactly clear, how we go about this, maybe Sen. Rasmussen, since he shares that concern could help us, but I would like to give the parties the opportunity to discuss with appropriate sources, maybe not all of the factual issues but, at least the circumstances enough to be able to provide them with some flexibility.

042 CHAIR SMITH: So are you talking about allowing the parties to speak to their respective supervisors about this issue.

044 SEN. ADAMS: I don't know. As I thought about that I kept thinking more and more about what Sen. Rasmussen was saying and I kinda think we may have put a box under this thing, around especially the parties. 048 CHAIR SMITH: I'm sorry, I'm not following you. You were talking about the concern about the supervisors not being adequately notified. Is that what you are still talking about? 049 SEN. ADAMS: That's one issue. That was the initial issue that made me rethink the position in regard to confidentiality. I still have that. I think that's all that needs to be solved. It gets me back to some of the comments again, that Sen. Rasmussen. Maybe Sen. Rasmussen could expand on his concerns.

055 SEN. RASMUSSEN: Well, the initial concern was that we had a debate about this the same day I got here and what I had heard was that this process was going to be open anyway, so we need to make the process open and that we are now closing that openness with this process, to some extent, certainly by including the parties. The parties can't talk here and I've never been in favor of that. Sen. Adams' concern, as I understand it, is that now if a complainant's supervisor also fits the

definition of a Senate employee, they can't talk to the party even though they may have some feeling of obligation to deal with the problems in their process.

068 CHAIR SMITH: What does the rest of the committee want to do? Do you want to go back to number 6 and work on these words again? The way the rule was originally written, it did not have any of this in it. This came about during discussions and through consensus of the committee because of concerns that you had at the time. I am sorry I cannot recall all of the conversations and all of the , ,!

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things that led up to all of these words but some of the parts I can recall, and they dealt with our ability to remain impartial and to remain above a charge that we have made ourselves biased through conversations during this process. I can recall that part of the conversation but what I would like to know is whether or not you all want to go back. First of all, do you all want to go back and change the words and if you do, which words do you want to change? 079 SEN. DUKES: Madam Chair. I recall the same conversations and I do not recall anything very specific about the parties, except they were included. Obviously, we have known all along we cannot stop them from talking and if the fact that we put the language in would mean that they are carrying on whatever normal thing they have to do in the process would make them violate our committee rules and perhaps face some sanction down the road. Maybe parties should be left out of it. Maybe we should go back to what I think we were aiming at and that is us.

089 CHAIR SMITH: We have had long discussions about whether or not we want this rule to facilitate some sort of buy off or mediation process between the parties and I, personally, am not interested in doing that. If harassment occurs, we ought to take the initiative and punish the harasser. Our point in these rules is to cause us to stop doing this and if we put a process in place that allows somebody that has all the power, that is a Senator, to negotiate with someone who has no power, that being an employee, then we are facilitating further harassment, in my opinion, but we can do it whatever way you want to do it. 099 SEN. DUKES: I agree with that but I think the distinction for me is that in the minority report we had a requirement that they go in and try to do that and I disagreed with that. If, by removing parties from this section, they end on their own going to do that. Even if we left it in and they did that, I don't know that we could stop them from doing that. I sure hope that the complainant will let us know or the investigator or somebody know in the course of all of this if the respondent has gone to them and said, gee, for \$2,000. we could take a trip to Hawaii and we would not worry about it or, you know, you're not going to have any kind of a life around here in the future if you proceed with this. Those kinds of things, I'm not sure we could stop it. I just don't require that they do it. 110 SEN. HAMBY: My big concern is that when we look at the term parties, it might well involve a Senator who falls under the Senate Rules. The claimant may not fall under the Senate Rules and would not be tied, necessarily, to this confidentiality. There is no sanction. I don't know what the sanction or the censure might be even for the Senator. 117 CHAIR SMITH: Ms. Van Almen, do you want to help us with something here? 119 VAN ALMEN: Yes. The way I understand that these

rules operated, that if you

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deleted parties and it turned out that parties wanted to have conversations at whatever level, that that would not preclude this committee from moving forward, because the way the rules are written, the complainant has already, that's presuming the charge has been made, presuming that there is an investigation under way, that issue is not really an issue that the chair is expressing because the committee has given itself subpoena power to subpoena witnesses, to proceed with this process, regardless of whatever discussions the parties may have outside this process. SO, by deleting parties, it would not have the result that the chair indicated, necessarily, and it would also not pre-permit any discussions by parties. 133 SEN. ADAMS: I think I would be more comfortable if we removed the word parties. 135 VAN ALMEN: If we removed the work parties completely Sen. Adams, then there is nothing to prevent the parties from talking to us. There is a provision in the rule that says that the parties, at least I had it in there, I think it is still there, that the parties or Counsel shall deal directly with Committee Counsel and should not contact committee members. I'll look for that. 142 SEN. ADAMS: Madam Chair, if that is the problem, we could just say members of the committee shall refrain from private or public discussion with the parties. 145 SEN. RASMUSSEN: I would be happy to go along with Senator Adams' suggestion. It seems to me that what we ought to say is that members of the committee shall not discuss the pending matter with the parties. Members of the committee shall endeavor, in every possible way, to maintain both the appearance and actuality of impartiality. 153 VAN ALMEN: I've drafted some language along that line, if you want to stay away from the specifics and go to the conduct standards. 156 SEN. ADAMS: I would rather go with the conduct standards. It is not my intent with this discussion to interject back toward conciliation discussion. My concern is this. Let's say the respondent goes to the complainant and says will you please talk about this and the complainant says, well, O.K and they do talk about it. Now they have both violated the rule, is that going to give rise to either due process or a jurisdictional question under the rule, that the respondent can use to get out from under the rule. It seems to me, it's at least going to rise to an argument about it and that is an argument I do not want to have. 165 CHAIR SMITH: What's your language, Kathleen? 165 BEAUFIT: Well, I was just trying this, during the pendency of any charge, members of the committee shall refrain from any conduct that would appear to ~ ' ,4!

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prejudge the charge and shall endeavor at all times to maintain an impartial demeanor about the pending charge at any proceedings relating to the charge. This is standard conduct rather than a specific. 170 CHAIR SMITH: Is it everyone's understanding that that would prevent us from having discussions with parties, with regard to the specifics of the allegation? 174 BEAUFIT: It would be kind of hard to maintain a

posture that you are not prejudging if you allow any kind of a private ex-party communication to occur because the very fact that it occurs suggests that it was... 178 CHAIR SMITH: That would be my feeling. I just wanted to make sure everybody understood. SO, you would like to replace number 6 on page 4 with the language in it. Kathleen can you give it to us again? 181 BEAUFIT: (Reads from paragraph 165 above beginning during the pendency). 186 CHAIR SMITH: None of us can write that fast. Kathleen, could we have it.. 188 SEN. ADAMS: I just want to clarify what I understand that means in regards to public discussion. Now if the party comes to me, I can say that the charges have been filed, I will not talk about the specifics of the charges. In addition, the Senate President may talk about the fact that charges have been filed. The respondent may ask me--in other words, we can all talk that there have been charges filed but we, specifically, cannot talk about the specifics of the charges. That seems to me ... 199 CHAIR SMITH: I think it's a judgement call, at this point, Sen. Adams and if you feel that you can talk about any aspect of this and maintain the things that Ms. Beaufait says, that we need to maintain and that is refraining from any conduct, discussion or comments that would appear to prejudge the charge and that you can still endeavor, at all times, to maintain an impartial demeanor about the pending charge, then you are safe. 207 SEN. ADAMS: May I ask Legislative Counsel if my interpretation is appropriate? 209 BEAUFIT: Sen. Smith, Sen. Adams, I think it is. This is the kind of standard that applies, for example, to lawyers. You will find in a matter of judgement that some lawyers will not even tell you that they represent X. They regard their refraining to that extent. Others will say, yes, I represent X but that is as much as the discussion will afford. That is the part where the judgement enters into it. There is a judgement in that language that perhaps is not when you flatly prohibit certain, it doesn't involve the same judgement call as it does in saying your demeanor shall be impartial. \: J~

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217 SEN. ADAMS: That means depending upon the judgement call by the individuals that the press could have access to it, at least, to the fact that the charge has been filed. 221 CHAIR SMITH: Sounds like it to me Sen. Adams. 222 SEN. BRYANT: Will Sen. Adams yield to the question? Does that answer your other concern though, about supervisor getting enough information so that he can properly separate or protect the legal part of it. 226 SEN. ADAMS: No it does not. It addresses my concern in regard to the respondent and/or claimant's ability to have some discussion with those parties but if we leave it as it is currently written, again, the claimant's supervisor or appointing authority never knows that this is happening, which I think was one of the things we were trying to get at, the purpose of it. Second, the respondent's supervisor and appointing authority does not know who the respondent is, so I still think that there is need for work on this but I will concur with the committee, if that is considered to be a substantive change because it is not within the conceptual definitions that we originally had. 239 CHAIR SMITH: Can you help us with this Kathleen? 239 BEAUFIT: This goes back to the question I had the other day on the reading, when you cite what is confidential and I was reading the charge and answer documents as being the documents the charge was in answer to, modifying documents and I believe some member of the committee indicated that that member was reading the charge and the answer documents. If you

read it the way I read it, the charge by X has been filed against Y, was not confidential, only the facts in the documents and the relating material that supported that was confidential. That was my reading of this language and I read the rest of the rule, having that in my mind, so some of the questions you are raising did not trouble me because I was reading charge as a noun rather than an adjective. I don't know that the committee ever resolved that on that page. 255 SEN. RASMUSSEN: I think your understanding is correct because documents have a meaning as plural, therefore respond to both charge and answer but, it seems to me we can solve this by putting another document in there and saying charge document and the answer document shall be considered confidential. 259 CHAIR SMITH: Does everyone agree with that? That's number 2 on confidentiality on page 4. The charge document and the answer document shall be considered confidential and shall not be subject to disclosure under public records law. We have added the word document after charge to make sure that everyone understands that we are talking about the document itself, not the fact \_ ' ~!

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that a charge has been filed. 269 SEN. RASMUSSEN: I don't think we ought to consider it confidential, I think we ought to make it confidential. 272 CHAIR SMITH: So number 2 reads again, the charge document and answer document shall be confidential and shall not be subject to disclosure under public records law. We all understand that to mean the documents and the facts within them themselves, not the fact that a charge has been filed. O.K. Anything else on that page, Sen. Adams. 281 SEN. ADAMS: NO, I'm on 7. Madam Chair, again, as per our discussion this morning, I bring 2, b. Outside of the context of the conceptual issues but as an issue of sign)ficance that I do think needs to be addressed. My understanding is that this is going to be sent out by Committee Counsel, all that we have authorized Committee Counsel to send out is the Notice of Procedure and Rights, which is page 8, and we have only authorized her to send it up to the respondent's supervisor and appointing authority, if you read Notice of Procedure and Rights, nowhere does it identify who the respondent is, nor have we directed Committee Counsel to send some type of communication to the claimant. It seemed to me our original purpose was more to fulfill an obligation to the claimant than to notify the respondent's supervisor or appointing authority. 307 CHAIR SMITH: You are referring to 2, b, the requirement that a Notice of Procedure and Rights, well O.K.

308 SEN. ADAMS: Madam Chair I'm saying that is the only document that we have authorized Committee Counsel to send. 311 CHAIR SMITH: And that notice is that you are authorized that on such and such a date so and so filed a charge of sexual harassment. 315 BEAUFAIT: The notice document is correct. There is no name on that. My thinking on that came from two perspectives. Number one, by not having a name and because it was going to an employer and/or supervisor in the employment environment it eliminated the potential, or in a way, I felt it helped with your confidentiality issue that what I conceived would happen is that you would hand deliver, in this environment, that it would not go through the mail, that you would walk over and hand this document to whatever the appropriate parties were and say this applies to Ms. or Mr. Who and give the name. That was just a way of triggering notice. It really has nothing to do with anybody's rights. It has to do with the employer



liability issue as almost a gratuity of this committee and this committee process.

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322 CHAIR SMITH: So you anticipated that this Committee Counsel would hand the document to the supervisor and say, this is in regard to X employee. 335 SEN. ADAMS: Until just now Committee Counsel would have been in violation of our confidentiality rule. 339 BEAUFAIT: I wrote this before the committee expanded it to that problem ...

344 SEN. ADAMS: I do not think this is a relatively solved issue and if there could just be a cover letter saying, here is your respondent and here is the Notice of Procedure and Rights. 345 BEAUFAIT: If we say, Notice Procedure under 2, b, page 7, Sen. Adams, it seems to me that in this sentence if you indicate that the respondent's name would be included with that notice, then we ought to be able to satisfy that concern. 354 SEN. ADAMS: There is one more concern I have and that is that we have never notified the complainant's supervisor and appointing authority and I thought our intention was to try to provide some type of opportunity for them to protest. 355 CHAIR SMITH: The response to that is unless the complainant and the respondent's supervisor were one and the same, it would not matter whether - the complainant's supervisor has no need to know.

359 SEN. ADAMS: Madam Chair, they are, you see, according to theory. This employee is under 15.01 - 15.05, which is the Senate President. The appointing authority is only the President. They are one and the same. That's the supervisor or appointing authority. Madam Chair, could she explain to me under 15.01 - 15.05 how an employee's appointing authority could be someone other than the Senate President. 373 CHAIR SMITH: According to Ms. Beaufait, the individual senators, you, in fact, are the appointing authority for your staff. 375 SEN. ADAMS: Madam Chair, it is my understanding that our definition of employees under 15.01 - 15.05 that the ultimate appointing authority was the Senate President. This particular paragraph refers specifically to that individual. I think we are making a big deal out of something that is easily solved. 381 CHAIR SMITH: Let me make sure, Sen. Adams, that I am understanding what you'd like to have. You would like to have notice to the complainant's supervisor that the complainant has filed a charge against the respondent. ~ ,

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386 SEN. ADAMS: Correct and the complainant's appointing authority, simply so we give those individuals an opportunity to do as we have suggested to provide some protection for the complainant. 389 CHAIR SMITH: How does everybody feel about this, does everybody think that is fine. Please speak this time. In order to protect the individual, does the supervisor need to know? Ms. Beaufait, do you have an answer to that? 403 BEAUFAIT: I think that is an answer, that becomes a kind of a how you practice personnel policy and I don't know that I have a clear

answer to that. If they are quite different persons and the appointing authority is removed into another building, I think you have a good argument then, that yes, you need to notify the supervisor to make it a workable notice. If they are, in fact, the same person, then you may have a difference in whether both need to be notified. It has something to do with the hierarchy and the geographical relationship or things of that sort that would make a difference. 417 SEN. DUKES: We wouldn't have any reason to believe that the appointing authority would then notify the supervisor. I am just concerned that if we spread this out, with names in it now to more places than we absolutely have to. Now if we need to do it that's fine. 424 BEAUFAIT: I think that's a personnel problem rather than having anything to do with due process. 426 SEN. ADAMS: Madam Chair, I wouldn't be uncomfortable just having to notify a Senate employee. I shared some of the concerns that Sen. Dukes has. 429 CHAIR SMITH: O.K. Do we want supervisor, no supervisor. Is that what we want, no supervisor? Only the appointing authority for both the claimant and respondent. Going once, going twice, the supervisor is gone. So the supervisor is gone from he or she is printed on the Notice of Procedure and Rights shall be provided to the respondent's appointing authority. TAPE 20, SIDE A 001 If we are going to notify the claimant's appointing authority we would add that after number 5 on page 2, committee counsel under procedure for filing a charge of sexual harassment Committee Counsel notifies the president, in number 5. Number 6 could be notification in similar language to the notice to respondent where it says if the respondent is an employee . . . Can we say if the claimant is an employee under Senate Bill 15.01 - 15.05 a notice of the charge . . . there is no notice of a charge. In number 5 Committee Counsel shall notify the Senate President that a charge has been filed, including the names of the charging party

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and respondent, and whether the allegations of the charge is within the scope of the rule. We can say in number 6 - upon receiving a charge which meets the requirement of subsection 1, the Committee Counsel shall notify the charging parties appointing authority that a charge has been filed, including the names of the charging party and the respondent. Discussion on page 2 new number 6 - under Procedure for Filing a Charge of Sexual Harassment - Upon receiving a charge which meets the requirement of subsection 1, Committee Counsel shall notify the charging parties appointing authority that a charge has been filed, including the names of the charging party and the respondent. Then, under Notice to Respondent of Charge to be appointing authority including the names of the charging party, and the respondent. Change last line on page 8, delete employer and supervisor, and insert appointing authority. 064 SEN. ADAMS: Clarify confidentiality statement. 086 CHAIR SMITH: Perhaps remove last sentence third paragraph Notice of Procedure and Rights. 090 VAN ALMEN: Send conclusion of the investigator to the appointing authority, to eliminate issue about breaching confidentiality. 134 SEN. ADAMS: Need to change page 10, Investigative Report, release the conclusion to the appointing authority only. 146 VAN ALMEN: Number 5 shall read then, the conclusion of the investigative report shall be provided to the following individuals. 148 CHAIR SMITH: NO, because all of those individuals have to have the entire report with the exception of the appointing authority, and you can say if the respondent is an employee, then the appointing authority shall receive the conclusion of

the investigative report. And that becomes number 6, get it out of number 5. So instead of 5,f., renumber it to number 6. If the respondent is an employee, then the conclusion of the investigative report shall be provided to the respondent's appointing authority. 182 SEN. DUKES: Page 7, for consistency, number 3, third from last line, where it says the charging party may amend the charge. It seems to me we ought to put in the same language we did where we allowed them to amend it, saying no later than eighteen calendar days from the day. , These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 35

186 CHAIR SMITH: This is in Notice to Respondent, Sen. Dukes, and he/she gets a copy of the rules, as well, and do you think that we need to put all of those time frames in that notice. The point of the sentence is to notify them that there is a possibility that the charge will be amended, and we tell them to read the rules. 191 SEN BRYANT: To be consistent on page 8, where we sometimes say response, and sometimes say answer, we highlight in bold print Answer in the second paragraph, and then we later talk about response, I think that should be Answer. The sentence is "This response shall be directly delivered . . ." It should be answer. 200 CHAIR SMITH: Anything else on page 8? Page 9, we have securing a qualified and neutral investigator. .comment Ms. Van Almen? 204 VAN ALMEN: I think all of you agreed that you just wanted the word qualified in there, I am not sure that is exactly where you wanted it, but you wanted the word qualified. Neutral was an attempt to identify what a qualified investigator would be, so I am not sure that is exactly where you wanted the word qualified placed. If it is, then we just move on. 211 CHAIR SMITH: Does everybody feel comfortable with the placement of the words qualified and neutral, in number 2 on page 9 ? 213 SEN. ADAMS: Probably under neutral, section three, you might add that the person is impartial, we list the qualifications and certainly that is implied, but we better say impartial, or insert it in there in some place. 218 CHAIR SMITH: Are we going to have to define impartial ? A "neutral" investigator is defined as someone who is impartial. I don't know how we would determine that, but, we can say that. We do not need to define it. As I am looking at this, I realize that e should be a separate number. It has nothing to do with a neutral investigator is defined as someone who. . . so we will make this a new e. Impartial is the new e, the old e is now 4, and the rest of the page is renumbered. 244 SEN. HAMBY: Kathleen, going back to the notion of impartial, would it assist also, if we were to look at a, sign)ficant experience in the investigation ... of sexual harassment cases, is there bias in litigating, in other words, can we call for impartiality if we have been a successful litigator on either side of the issue. Would it be better just to note sign)ficant experience in the investigation of sexual harassment. 255 VAN ALMEN: Sen. Hamby brings up the point, I tried to identify more objective \_ , ' ~!

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measures for the Senate President to determine a way in which to hire an investigator. If you start tagging on qualities like "impartiality" which apparently would have to be determined by the Senate President, without reference points, what one person considers is an impartial

background in the experience another person may not consider as an impartial background experience, yet the person themselves may consider themselves to be perfectly professional and capable, and I don't know how you would judge those things, and determine it. . . 268 CHAIR SMITH: How do you avoid a respondent, if the investigator is a person, if you have the word impartial in here, and an investigator is a person who has litigated these cases for complainants, how do you keep a respondent from saying that, in and of itself, causes this person not to be impartial, or vice versa, but that does not mean they are not impartial, Sen. Hamby, and the problem that we face is that there are very few people out there in the world that have experience in this field, and I believe that a qualified litigator, a professional, with any sense of ethics and professionalism, would not take on this sort of thing. There has to be some basis down here way at the bottom, that we are going to hire people, be able to make these kinds of decisions, and trust their professional ethics to a certain degree. I suppose it is possible to hire someone who has some sort of attitude that every complainant is right, or is telling the truth, or every respondent is a victim, but I do not know that that is that realistic. 292 VAN ALMEN: That is why I would suggest to the committee, that you not use that as a qualifier, because it leaves in a very discretionary and arbitrary context, a parameter for the Senate President to consider, which is really, as you both just pointed out the problem, you cannot do it. And, if you get into people challenging impartiality, which will invariably happen, you have just included a factor for confrontation and adversariness, that did not need to be there. 305 SEN. BRYANT: I have read many, many reports from all kinds of agencies and police forces, and generally, they are very good. But, occasionally, there is a bias or a feeling there that just reflects throughout the report, and the one who has to make this determination is the Senate President, since the Senate President appoints the investigator, and . . . 315 CHAIR SMITH: On the other hand, we have an opportunity to decide, based upon the report itself, whether or not the conclusion in that report is valid 318 SEN. BRYANT: But the conclusion in the report, and the report itself, will not show bias. 320 CHAIR SMITH: Oh, I thought you just said you have read them, and occasionally you run across one that does.

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322 SEN. BRYANT: Well, what happens is that you read the bias, and then you go ahead and do your own investigation or what not, and you see every opportunity where one thing could be interpreted two different ways, this particular investigator went the other direction. What I am suggesting, is that when this investigator is important, since he is appointed since this is an important function, that he needs to take the precautions to make sure that we have an impartial investigator. You get a list of a resume' of the investigators, and we have some listed here, you ask for references, you make a few phone calls, that is what would be involved in doing that.

337 CHAIR SMITH: OK. How about instead of saying A "neutral" investigator is someone who is defined as impartial, is it possible to say something in there about how the Senate President will to the best of his ability try to assure that the investigator is impartial, or unbiased, something like that ? 342 SEN. BRYANT: Yes. 343 CHAIR SMITH: Does that leave you open to challenge from either party, that that has

not occurred, that the President has not done that, by putting the language in there, are we leaving ourselves open to another point of challenge? 348 BEAUFAIT: I pointed out this morning, that anything you do leaves another point of challenge, if an attorney representing somebody is very, very careful about the case. It is true that there is a perception that a person who has been a plaintiff's attorney, all their professional career, just simply cannot be a defense counsel, not because they are not qualified and knowledgeable, but because somehow there is a philosophical aspect. I have heard that, and I suspect that it would rise in this case, if you took someone who had litigation experience, and their litigation experience had consistently been on one side, or the other. 362 CHAIR SMITH: OK. "Neutral" investigator is defined as someone who is impartial. The Senate President has four working days to act to secure a neutral investigator, who is impartial. I would feel more comfortable if we give the President the opportunity to do that to the best of his ability, although. . . give me words, committee. 388 SEN. BRYANT: I have a suggestion, and it fits into item one, which we were discussing, and have it read: The Senate President shall within FOUR (4) working days act to secure a qualified impartial investigator, and then put "qualified" under the number 3, investigator. 412 CHAIR SMITH: FOUR (4) working days to secure a qualified and impartial investigator. . . and then replace the word neutral in 3 with qualified. Also, in 2,

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replace neutral with impartial, in 2. Is there anything else on page 9 ? 426 SEN. ADAMS: Let me ask a question. My understanding is that the Committee will receive a copy of the charge. . . 432 CHAIR SMITH: The Committee will receive not)fication of a charge.

436 SEN. ADAMS: I cannot find in this document, where we receive not)fication of the charge. I am getting very apprehensive again, that we have been rushing through this thing. 440 CHAIR SMITH: Senator, we have not been rushing, we have been changing a lot though, and things do get dropped when we change every word six times. TAPE 21, SIDE A

004 The question is, where does it tell you to notify us of the charge. Is there instruction in here for you to notify us of the charge. 011 SEN. ADAMS: We had a discussion we did want to be not)fied, because of the fact that, otherwise, we might inadvertently talk to one of the claimants or respondents. . . That is a concern, I can find when we have something in here that is not consistent. I get real apprehensive when something is dropped off of this thing when we had the discussion before, and I am getting the sense of apprehension that if this has dropped off, what else have I forgotten that has been dropped off this thing. 020 CHAIR SMITH: Well, we are all sitting here right now Senator, and we all have it in front of us, so maybe we can go through it. Is there anything else on page 9? Page 10? Other than the changes we have already made.

024 SEN. DUKES: I am sorry, it is just that we went to page 2 which on my last meeting was page 3. . . 026 CHAIR SMITH: No, no, no. Do not use the one from the last meeting, Sen. Dukes. Do you have your new copy? 027 SEN. DUKES: It is just that that was the one that I had my corrections written on, and that is not the only correction that did not

get in there. What I am doing, is comparing what I had at the last meeting, with what I have at this meeting, and I am not sure that is the only thing off of that particular page. My notes say that 3,d, we changed notice of procedure and rights to notice of right to file a charge. i, , These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 39

037 CHAIR SMITH: I believe you are correct. These are the kinds of changes which I consider to be scrivener's changes, and we have made those decisions, and those are the kinds of fixes that we fnded before the final printing. 044 SEN. DUKES: I do not consider the dropping of the fact that I was going to receive a notice of a charge to be a scrivener's error. 046 CHAIR SMITH: Senator, it was not on this piece of paper, you are correct. It is in the record of these proceedings however, and it is in the disc, and again, I can only apologize for the computer problems we have been having. 049 SEN. ADAMS: The apprehension I have is that I want to do this right, and I was asked to look at a document that I assumed had all of the items that we had in there. I have tried to faithfully stick with that, and be as consistent, and provide constructive information to the committee. Now, what I am feeling is, I have got to go back and look at the previous notes, to make sure, and not only I, but Sen. Duke just had something. I have to go back and look at those notes, in addition, I am going to have to leave here at 2:50 p.m.. There is no way we are going to get through this thing in that time frame. 056 CHAIR SMITH: Senator, what would you like to do. 057 SEN. ADAMS: I at this time, see that there is the potential that there are items that may not be in there, I would like to adjourn, and give a recess. I will work on this until 2:00 a.m. if I have to. I will come back at 8:00 a.m. tomorrow morning, and get back on this thing. I would like the time now to go back over my notes, and make sure something else has not been.... I understand the pressures...I would be happy to meet at 8:00 tomorrow morning. 070 SEN. RASMUSSEN: I sense that Sen. Adams and I are probably as irritated with one another as anybody, which is somewhat curious, since we are saying something of the same thing. I think we have a set of rules. So we now have complied with our obligation under the charge given us by the Senate to have rules within 30 days. So in my view, the pressure is off on the timing issues. I do not think we need to meet tomorrow. I think we ought to make the corrections we have made to date, I think we ought to have these rules out in the public forum, and we ought to schedule a meeting for next week, after we have cleaned up these grammatical problems, style problems, and format problems, which keep creeping up, not because we have incompetent staff, but because we have been keeping the pressure on them. Get that whole line of problems out of this, so that we can have discussions on the topics that folks want to have discussions on. That is the reason for my little outburst at first. I have not had the time to do the reading that Sen. Adams clearly has done here, and I would like to have that time, and I would rather do this next week, after we have had a chance to get a cleaner

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copy in front of us, and people besides the six of us and our Committee Counsel have the chance to read these rules too, and maybe want to comment and talk to us about it. I would rather do it that way, because it seems to me that that gives us the chance to deal with some of these problems.

093 CHAIR SMITH: I appreciate that, and I will agree to that with one provision, and that is that we do not monkey with the substance of these rules. We have people sitting out there waiting for them to be adopted. They are adopted now. If we have some reason to use these rules between now and next week, I would like those people who may be involved to have some assurance that the substance of these rules will remain as it is.

099 SEN. ADAMS: I agree, and that is where I have some difference of opinion with Sen. Rasmussen. I think you are right, we agree that we need to take time to do that, and I apologize if I have shown any emotion that would indicate that I am agitated or upset. On the other hand, here is the concern that I have. If you look at what we have done today, we have made some substantive changes in the context of the conceptals specifically in the area we completely reversed ourself on confidentiality between this morning's session and this afternoon's session.

108 CHAIR SMITH: I suspect every time we meet, we may have the tendency to completely reverse ourselves on virtually every point in these rules, it has occurred every time we have met in the past, and will probably continue to occur. At some point, we are going to have to say, OK, that is it. There may be points in here I do not like, but that is it. So that the world can get on with it's business, and we can as well, and everybody knows what the playing field is.

114 SEN. ADAMS: That is the concern I have is that I cannot guarantee that as we go through and look at the other conceptual items that there may not be a substantive issue, therefore, if a complainant comes forward on the assumption that there will be none, and we change as we did on the confidentiality, I feel we have done an injustice to any potential future claimant. All I ask, is that before we put somebody into this box, it must be a well designed box.

122 CHAIR SMITH: We have rules, and anyone who wishes to come forward and file a charge right this very second can do so, under the Senate rule. We can change the game as we go along, we can change the rules anytime we want to, but they are now free to make that charge.

127 SEN. DUKES: I would like to agree with Sen. Rasmussen. I have two concerns. One is page 11, which is the main reason I got here. That is different than what we adopted the other night

consens~ ally. 130 CHAIR SMITH: You are right. There is a difference there. . .

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131 SEN. DUKES: And the other one is that you were expressing earlier that the fact that we have rules, in and of itself, is not going to get somebody to file a charge, that is, I believe that there are probably people out there, watching to see what the outcome of the rules are, and if they are aware that there is any question up in the air, they are probably still going to wait, and I would not blame them for doing that. I would have a concern that someone files a charge, even though a change in the rules, I do not think would impact them, I think that they would

still be proceeding under the rules that were in place at the time they filed the charge. I would be concerned if there are issues that this committee wants to go into, and I cannot say other once we get past page 11, that there is really much of anything that I am concerned about that I know of right now. But if this committee still has unresolved issues, I would be concerned. 145 CHAIR SMITH: Well, it sounds like this committee is going to forever have unresolved issues, and I guess all I can say is that anyone who wishes to enter this process, should just bear that in mind. The rules are in place now, but we do not compel anyone to file charges, but we neither can prevent anyone from filing charges at this point, and I guess it is buyer beware. 154 SEN BRYANT: I think that someone can file a complaint now, they can file a complaint. To me, that does not affect our ability to go ahead and review these rules, answer our concerns, hopefully improve upon them in some respects. I do not think it would jeopardize anybody's rights. 162 CHAIR SMITH: May I offer a suggestion. We have the tapes of all the meetings so far. How about, if you all go away with your rules, mark them up with the things that you understand, not things you do not like, only the things that you understand we did differently than they are written, and submit those to Counsel. She will review the tapes, you can review them with her if you would like, and come to some decision according to what we said in those meetings about what we adopted. If we have called it something different than what it is, whether we have written the wrong name of a notice in there, those are easy fixes, those kinds of things. The conceptual amendments, we need to deal with. You need to tell me whether or not that is what you understand we did. As long as everybody understands what we are doing here, we can come back and deal with those conceptual amendments whenever you want to. You all called this meeting. We can finish them today, I think, before Sen. Adams has to leave, at 2:50, if you would like. 184 SEN. DUKES: I would prefer to deal with page 11 today. We have done this one so many times, I can fully understand. . .

188 CHAIR SMITH: Let's get to that point. The point on page 11 that I find I take exception to in terms of what we adopted, is in number 5, second line, the last ~ ' ' ,! . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 42

phrase in that sentence "or allegations resulting from the investigative report." My recollection of our conversation was that we specifically deliberately did not include allegations that the investigator comes up with in his report, only things that are specifically outlined in any charge or amended charge. That was the whole reason we created an amended charge, was this discussion about what we should include in the complaint. 207 SEN. DUKES: My recollection of the last meeting we had, which we went over this so many different times in different places, was that we ended up with two possible options, when this committee moves forward. One is that the complainant is still a party, as the original charge or the amended charge, whichever it is, is moved through the process is still with us, and we choose to go forward on that. The second was, that the complainant is no longer a party, they have said not me, and they are out of this, and we choose to go forward for one of those reasons we have already listed. So there are two options, it could still be the complainant, or it could be simply us. I would like to see those delineated, and in my mind, that if we moved forward on our own motion, if you will, that was the complaint. And the other was still the charge, or the amended charge, but I do not care what we do with that.



This language in 3, has left the complainant out of it. 224 CHAIR SMITH: That was my recollection of what we did. We chose, at that point, to move forward if the complainant did not. We chose up here in 1, 2, and 3 whether or not to move forward. Since we were making that decision, we had to create a complaint to give to the respondent, because it was our process at that point. It was not the complainant bringing it forward, the complainant still could be a cooperative person/party, or not, but that in 1,2, and 3, we were determining whether or not there was sufficient cause to believe that our Senate Rule had been violated, and if so, we were going to do what that Senate Rule says, and that is investigate that possibility. 238 SEN. DUKES: We might want to review the tape then. I am completely comfortable with that method of this committee going forward. However, I recall Sen. Rasmussen's objection, and the point at which he said if that was the understanding, he was a no vote, and we did not go forward with it that way. We still left the complainant in, in the matter, if they chose to be. And I am completely comfortable with it either way, I simply wanted that worked out before we went forward. 246 CHAIR SMITH: Is that the recollection of the rest of you as well. I recollect Sen. Rasmussen's objection, but I thought he made that objection because the committee had chosen otherwise. I do not think he would have made the objection if we had done what he wanted us to do. 257 SEN. ADAMS: I am comfortable with the way we have drafted it, but I would . . . , . . . , These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 43

not be objectionable to revision. 260 CHAIR SMITH: What language should we put in here that would cause us to allow the complainant to move. . . now, you are talking about if we do not find these things, if we choose not to move forward, and the complainant wants to, is that what you are talking about, Sen. Dukes? 264 SEN. DUKES: No. We are talking about what is a complaint. What do we move forward with. What do we then go on and notify in the second notice to the respondent, what do we go to the public hearing on, and it can be one of two things, it can be that the original charge or amended charge that the complainant brought forth, or it can be this committee sitting down, and the complainant signs it and they are moving forward, and we say fine, and they are still with us. Or, it could be the committee on it's own, saying we are going to move forward, which could be identical to what the complainant has filed, or could be something we pulled out of the investigative report. 276 SEN. ADAMS: I am comfortable with that, as long as it is clearly understood that the complainant cannot go forward without the consent of the committee. 280 CHAIR SMITH: If the conclusion in the investigative report is that there is a preponderance of evidence that harassment occurred, and the complainant can then move forward, and we take no action to decide whether or not to bring it forward, unless the complainant does not. 287 SEN. DUKES: No, probably a finer distinction than that. If we believe it should move forward, and the complainant is still there with us, and still wanting to pursue this, and they still want to file the complaint, then it is their complaint that we move forward with. If they are not there, then it is our complaint that we move forward with. 292 CHAIR SMITH: So your proposal is that we still go through, we still meet, we still examine the criteria, and the report, and we still vote on whether or not to press forward. At that point, if the complainant also wants to move forward, then we create a complaint that includes the charge, and any amended charge, and he/she signs it. 301 SEN. DUKES: Yes. And if they are not, or if we decide to

include things from the investigative report that the complainant did not list, that we can add those, and it becomes our complaint, and comes out of the investigative report. And again, I am not necessarily going to argue in favor of that one, except that I believe that is what we did, and I do not have any problems continuing. 310 SEN. HAMBY: And I have real problems moving ahead with or without the

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complainant, your sequence that you just laid out... 311 CHAIR SMITH: That is a substantive issue that we have argued about six times, Sen. Hamby, and the committee has decided a couple of times to move forward. I guess we can argue it again, if we want to. 314 SEN. DUKES: This at least allows the complainant to still be there, if indeed they are still with us. I perceive that to be a compromise that we came up with at the time, that at least made Sen. Rasmussen more comfortable, although he was not there to comfort yet. Our complaint, could be broader than the original charge, or the amended charge, and we do not limit it to coming out of the investigative report. 326 CHAIR SMITH: That is one thing I have a different recollection of than you. My recollection is that we could only bring the complaint from the charge or amended charge, and that was the whole point of the amended charge, was so that we would have that document from which to draw our charges, and we would not be trying to pull things out of the investigative report. My recollection is that it led to our going back and creating an amended complaint, so that we could not go far afield. So that we could only use the documents that the complainant had given us. 339 SEN. BRYANT: That is my recollection, too, otherwise how could the respondent have an opportunity to respond to the new allegation that the investigator turned up. Let's say the investigator uncovers something, puts it into the report. It is not a new allegation, a new charge, it is in the report. The respondent has never been asked about it, discussed it, and never had a chance to respond to it. Are you willing then, without having that opportunity, to go ahead and allow that to be included in the complaint. 354 SEN. DUKES: We had this discussion the other night. My memory was that we had said that they would be sent this information in the second notice to respondent, they would have the opportunity then, during the hearing, to respond.

359 CHAIR SMITH: Sen. Dukes, I think it was my argument that we do it that way, and Sen. Bryant said, no, they have a right to answer up front, and we should not be trying to create things from somebody else's document, and that we should stick to the charges that have been alleged in the charge or amended charge. In the next sentence, the complaint shall be signed by the chair of the committee what if it says that the complaint shall be signed by the charging party, or, if the charging party does not wish to sign the complaint, by the chair of the committee. Is that OK?

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381 SEN. ADAMS: In that same sentence, we refer to the Notice of

Procedure and Rights, which may not be the document that we wanted to refer to, because it is a document that talks about the original charge. . . 391 CHAIR SMITH: It is not the Notice of Procedure of Rights, it is the second notice. I think that is another one of those places where we did not get the name changed. What we are referring to is the respondent's second notice of procedure and rights. 403 SEN. ADAMS: I apologize, I have to leave. I will be back. We need to do witness lists, you are going to find it is potentially logistically impossible to do what we intended to do. I am not saying that we need to come back to that. We have set some time frames that logistically may create an impossibility. That is not a conceptual issue, but it is a logistic issue. I am still concerned, that what I was reviewing were things within the document, not things that may have been left out of the document. I still reserve my concern that I want to have time to look, in case something had been left out. 430 SEN. HAMBY: I have a question on page 16, and 18. I just want to register 437 CHAIR SMITH: Let's go on with the Notice of Public Hearing, and the conceptual amendments of the Notice of Public Hearing. You are fine with page 17, Sen. Adams. 442 SEN. ADAMS: I am fine with what is on page 17, but have not looked to see if there is something that should be on there. 447 CHAIR SMITH: And the Notice of Public Hearing, Sen. Adams, which is page 12? I know you have to go, one minute. 449 SEN. ADAMS: No, I do have a relatively minor issue, in regard to the five days working, but it is complex to describe. It refers back to allowing complainants and respondents to be able to bring witnesses, and I did not see a mechanism where it tied where they had to give us . . . I think it is as simple as changing the number of days, but trying to explain that will take more than two minutes. It may not be a big issue, TAPE 20, SIDE B 001 CHAIR SMITH: This is a courtesy

010 SEN. ADAMS: Right, and see, the concern I have is that you let them do this, submit five days in advance of the hearing, and then . .

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012 CHAIR SMITH: The list that they are going to get from the committee is the list that the committee has determined... 013 SEN. ADAMS: This ties to my concern in regards to this. I do have a conceptual issue on this page that ties to a non-conceptual issue on this page, and the problem is trying to get those days to work. It could be done, but potentially you could have somebody coming at 4:59 p.m. and giving you a list, and then you cannot reply to the second part of it. 019 CHAIR SMITH: That is, we give them the committee's list? The committee's list does not include the party's list. 020 SEN. ADAMS: Yes it does, in this case it does. It talks... 022 CHAIR SMITH: These are the lists of witnesses that the committee itself has decided to have, not those.... 024 SEN. ADAMS: It may not be an issue, I may not understand that. But, with the very short time I have, I need to think about it. 025 CHAIR SMITH: Go ahead and think about it on your drive down there. You have lots of time to think about it. The list that the counsel is presenting to the parties, is the list that the committee wishes, not another party. Are we finished with page 11. We deleted or allegations resulting from the investigative report.

On page five, we added the word only, so it says shall include only the allegations stated in the original charge and any amended charge. 043

SEN. DUKES: Did we change Notice of Procedure and Rights to 044 CHAIR SMITH: To Respondents Second Notice of Procedure and Rights.

045 SEN. DUKES: And, just that we need to put in some language that says who we are sending it to. Served by registered mail, to the respondent.

051 CHAIR SMITH: And served to the respondent by registered mail. Anything else on that page. 057 SEN. HAMBY: In the first point, I guess it goes back to Joan's earlier comment of the committee doing further investigation, rather than proceeding to a full hearing. Point one, as you read it, the decision is made to proceed to hearing for further investigation. . . .

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063 CHAIR SMITH: According to the Senate Rules, that is what we are doing in these hearings. 064 SEN. HAMBY: Oh I see, that was what I was questioning, whether I would automatically assume that we would continue to investigate, or delve deeper. 066 CHAIR SMITH: Yes, that is what we are doing in this hearing process, is investigating the allegations contained within the charge. The preliminary investigative report that the investigator does is what gives us the basis to begin our own investigation of the charge. Remember, we had a conversation about are we just going to take up where they left off, take the investigators word for everything, and just recommend punishment, if the investigator says so, or are we going to have a public hearing process, and conduct an investigation on our own.

075 SEN. HAMBY: Let me paint the scenario. That there has been, but there is no preponderance... 077 CHAIR SMITH: That the investigative's report indicates that there is no preponderance of evidence. 079 SEN. HAMBY: So am I to believe then, that should the committee decide to further investigate, even if there was no such evidence reported by the investigator, that the committee in fact, could re-open. 082 CHAIR SMITH: That is correct. Sen. Hamby, 3 b, speaks to that.

082 SEN. HAMBY: That is what I was wondering, if that is the committee's understanding. 083 CHAIR SMITH: Yes, that is what we decided. And the reason we decided that is because we felt that was our obligation. That if a majority of this committee felt that the investigators report was a piece of garbage, and they wanted to investigate it, they should, and could. Are we finished with this page now. There are some conceptual changes on page 12. 090 VAN ALMEN: This was the notice to the charging party in an attempt to give that person more information, and I believe that the only thing I changed, that second line, has determined that the criteria for further investigation has been met. Therefore, the committee is proceeding with a complaint to further investigate the allegations. I deleted some language I think that I had before about, you are directed not to talk to individual committee members, because you decided that that was taken care of in another provision, so I deleted that language, and the rest was just talking about in an affirmative way, giving them ~ ~! -

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up front notice about witnesses, in the notice. I do not remember you asking that we include anything other than that, or talking about the desire to include other specific provisions in that notice, but you may have. 109 CHAIR SMITH: No, not that I recollect. Is page 12 OK? 112 SEN. BRYANT: In the first paragraph, I re-phrased your last sentence. I said, Therefore the committee is proceeding with an investigation based on the enclosed complaint. Because with this notice, they will receive the complaint, and I thought that read better than what was there. And then, later on, when you talk about subpoenas, who did you intend to serve the subpoenas. 117 CHAIR SMITH: It speaks in the rule, the Senate President serves, that is covered by statute, that says that a Senate Committee it shall be served by the Sergeant at Arms, or if the Sergeant at Arms is for any reason not available, then by any person who is qualified to serve, who is 18 years of age who can sign the return. So the Sergeant at Arms is designated by statute as the first person. 125 SEN. BRYANT: And that would include all witnesses that are requested to be subpoenaed, whether they be in committees, the charging parties, or... 128 CHAIR SMITH: Would you give us that language once more, Sen. Bryant. 128 SEN. BRYANT: Yes. Therefore, the committee is proceeding with an investigation based on the enclosed complaint.

130 VAN ALMEN: Sen. Adams expressed concern about exchange of witnesses, and Sen. Bryant, you may be able to tell him about this later. The thought was that since the subpoenas would come from the committee, no matter who does it, and the witnesses by either party, that would be subpoenaed have the seven day requirement, and that is an effort to give people who are being subpoenaed a little more advance notice, and this seven days was written when you first had a shorter time frame, in the time that you were going to have a hearing, you have now potentially lengthened that some, but it was a way to give advance notice, that is where the seven days came from. Then, the five day provision on witness exchange, was an effort to allow the parties to see which witnesses the committee had. They can do it sooner than that if they want, and it would maybe eliminate... So there is no changes on 12. 153 CHAIR SMITH: No, other than the last sentence in the first paragraph says Therefore, the committee is proceeding with an investigation based on the enclosed complaint. Is that correct? OK, that is the only change on page twelve. The only other conceptual amendments are Conduct During Proceedings, on page

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17. Senator Adams indicated that he had no problems with this page. 160 SEN. BRYANT: On page 14, item 3, under 18.02.12, we talked about the challenge, I thought we might want to put in a time frame there, so that the challenge does not come the day of the hearing. I would suggest the challenge shall be filed seven days before the hearing. 169 CHAIR SMITH: You are suggesting seven days, Sen. Bryant. Sen. Hamby, Sen. Dukes, how do you feel about that. If the challenge is agreed to by the President, the President needs to have time to find another member, but I don't think we need seven working days. I think seven days is enough, prior to the date of the . . . learning. Anything on page 17? Conduct During

Proceedings. I saw a couple of typos in here, but other than that.

189 SEN. HAMBY: Back to 16. I just got a circle. The third line, at the very end of the third line on page 16. Does that mean any member?

190 CHAIR SMITH: A member who intends to subpoena persons, a member of the committee, we are talking member of the committee. The members themselves, during this process, can also submit lists to counsel of individuals they wish to have subpoenaed. 200 SEN. HAMBY: I understood that the committee, by rule, can subpoena. I did not realize a member of the committee could subpoena, and that is how I read this.

204 CHAIR SMITH: I wrote this rather liberally, thinking that I would like to give the members as much latitude as possible to have their questions or issues resolved, and so 209VAN ALMEN: Is Ms. Beaufait suggesting then, that the sentence should read, the committee would sign the subpoena? 212

BEAUFAIT: Your decision earlier, Chairman Smith, was that you would have your subpoenas signed by the President of the Senate, because of the problem of getting the committee together. It has not been customary in legislative practice that individual members - it required a majority vote of the committee, or a majority vote of the committee that request the President of the Senate. That is why I was lifting my eyebrow. 218 CHAIR SMITH: That is true. I deliberately asked that it be written this way, however, thinking that each of you may wish, or have certain ideas about should a charge come, or a complaint come before us, you have read the investigative ~ ~! ~- These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 50

report, you each might have persons or documents that you felt it important to come before the committee, and I wanted to write this as liberally as possible, in order for you to have the ability to do that, should you choose. It is written deliberately that way. 226 SEN. DUKES: Can I suggest that we put at least one gate in there, and that would be to change it to who wishes to subpoena, instead of who intends to subpoena. Certainly, it would not be one of us, but when some future committee member, who intended to go on and on, forever and ever, subpoenaing everybody that they could find who had ever met this person.

233 CHAIR SMITH: You said, who wishes to subpoena, I did hear you, Sen. Dukes. OK, so we did not address this, this has not changed, since the Witness Attendance appeared in our rules. And it has not come forward, so I have not given you that explanation before now, nobody has raised it before now. 240 SEN. DUKES: That is fine, but just in case in the future, there should be some committee member who wanted to subpoena everybody that has ever met this person, and drag the proceedings on, with that, a little bit of a bar or gate in there, I am assuming it will at least run through the Chair, or the Senate President, or somebody. If there is no implication in there, at least, that each one of us can give you a list this long, of people and documents to subpoena, and that they

251 CHAIR SMITH: Would you like to run this through the chair?, or would you like the committee to meet, to vote on the witness list. Those are the two choices. 253 SEN. DUKES: If someone disagrees with the decision of the chair, four members can always call this committee back in and make a decision. 254 CHAIR SMITH: So a member who wishes to subpoena persons or documents under this rule, must provide, we need to say something about how you get the chair's consent...

260 BEAUFAIT: Start your first sentence with just With the approval of the Chair of the Committee, a member who wishes to... 261 CHAIR SMITH: Thank you. With the approval of the Chair, a member who wishes to subpoena persons or documents under this rule must provide committee counsel with a list

of persons or documents no later than seven working days prior to the hearing. 272 BEAUFAIT: In a, b, c, d, and e, we refer to the subpoena as process. Knowing the lay person's confusions about it, perhaps it would be wiser to subpoena all the ~ , . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Sexual Harassment April 8, 1993 - Page 51

way through, or process all the way through, whichever way you choose to go. 276 CHAIR SMITH: Let's use subpoena all the way through. Are we done with page 17?

286 SEN. DUKES: I have only one, it really does not need any particular discussion, it is just that first sentence, if you read it all the way to its end, does not make a whole lot of sense at the very end. That is a scrivener's error that can be corrected, the last piece of it does not make sense. Number 4. 292 CHAIR SMITH: This is our fault, if this does not make sense. 294 SEN. DUKES: There is no misunderstanding as to what it means, it was certainly, we did it, and did it, and did it on the record, it should be starred, and make it a little more legible. 303 SEN. HAMBY: While we are searching, let's think of a possible scenario of a television station that comes in and states I can readily hide the witness by a blue dot, etc., etc., is there a possibility of being challenged, you know the argument, it is just curtesy right now 310 CHAIR SMITH: Ms. Beaufait, can we be challenged, if they come and tell us they can block out the face of the person who does not wish to be photographed? 312 BEAUFAIT: The requirement of the constitution is that your hearings be public. It requires admission of members of the public, it does not require you to provide a room that is over-sized to accommodate every person who might want to come, and you are probably precluded from saying you cannot report on anything that occurs in the hearing, but the mode in which that reporting is done, your rule is aimed at keeping minimum interference, confusion, and I don't think that is a difficulty. The question of whether or not concealing the identity of the witness is adequate, to meet what you are trying to do hear, I could not respond to, I think it becomes a policy issue for you. 329 CHAIR SMITH: I don't understand, Sen. Dukes, which part does not make sense. 330 SEN. DUKES: Any witness who appears at the hearing may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing by radio, television, or photography. Once you hit the while the broadcasting part, you lost something, a verb I believe. 343 CHAIR SMITH: Is occurring, after the coverage of that hearing ...

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346 BEAUFAIT: Right, and then you do not need the by radio, television, or photography. All right, this is what I came up with. Any witness who appears at the hearing may request not to be photographed or be required to give evidence or testimony during any broadcasting, reproduction, or coverage of the hearing. My conclusion is that as long as your hearing is public, in the sense that it is public in that the public is allowed to attend, and that media coverage is available, if your aim is to either avoid confusion in limited space, to maintain a noise level, some of these kinds of things, you have the right for protection of the

witness from additional difficulty in testifying, I do not think you have caused it not to be a public hearing by doing that. 374 SEN. BRYANT: I do not disagree, but, generally the main reason you want to limit them is because of the distraction, noise, etc., that they can cause by being there. Since we are a committee, and we have those there anyway... 382 CHAIR SMITH: That would not be the point of this... 383 SEN. BRYANT: You are trying to protect possibly the witness. 383 CHAIR SMITH: That is right. That is the point of this. And, it is after request of the witness, and we throw this discussion around, and based on legislative counsel's opinion that we do have the ability to do this, I thought it was kind of the sensitive thing to do. The media can still cover the event, they just have to write it down, rather than take the gory picture of the witness crying on the witness stand. Is there anything else on that page? 395 SEN. BRYANT: Item one, just clarification, where it says that during the hearing the parties, or their counsel shall direct all communications initially to the chair, and then to committee members if appropriate, just for clarification, that does not cover direct examination, or cross examination, and my point is that those questions do not have to come through the chair, otherwise, we are going to one, lose the validity of the examination, and two, it lengthens the hearings by days. I have done that once in a BOLI hearing, and it was miserable. What could happen is that every time, if I am the attorney for the respondent, and I want to ask a question, I ask it to the chair, and then the chair asks it to the witness, or you get permission. And that just loses the continuity and fluidity of it, and plus it lengthens the hearing. 420 BEAUFAIT: In the BOLI process does the chair have the authority to bypass the chair, to allow the counsel, or who ever is asking the questions to ask them directly?

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424 SEN. BRYANT: The last one I attended, which was several years ago, they did not feel they did. But, they were going to go back and try to change that administrative rule, because of the expense and delay of the hearing, and they may have done that. My concern, also, would be just from a due process argument. I think it is important that the counsel for either side be able to ask those questions directly, and in fact, I think it is extremely important to have that ability. 433 CHAIR SMITH: I was trying to reduce the intimidation factor of attorneys on witnesses, to a certain degree, and also pattern, where we could, some of our process with the BOLI process. What does the committee want to do with this? TAPE 21, SIDE B

004 SEN. RASMUSSEN: You can make that permissive language, during the hearing, the chair may require communications be made initially to the chair. 007 CHAIR SMITH: Sen. Bryant, does that accomplish your... 007 SEN BRYANT: No, because I do not want it to be permissive. I want counsel to have the right to...

008 CHAIR SMITH: I would like it to be permissive in certain situations. 010 SEN. DUKES: When I read this initially, I assumed that it was the same procedure that we give to agency folks to come into a regular committee, and at some point, when I was doing either this, or the last draft, and I do not remember where I hit upon it, and I cannot find it now, which I said do we allow cross examination. 014 CHAIR



SMITH: Yes, we must allow cross examination, because the due process requires it.

016 SEN. DUKES: Under the assumption that I was going under, cross examination, or even initial examination, why would you want to go through the chair or the members to do that.

022 CHAIR SMITH: Can we say except during direct examination, or cross examination of witnesses? Delete appropriate, and say except direct and cross examination of witnesses. Does everybody feel good about that? Anything else on that page? 038 VAN ALMEN: I just point out that I did change number 3, which did read the chair can punish a breach of order. Sen. Adams expressed a concern, I felt that , ~ - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Corr r ~ittee on Sexual Harassment April 8, 1993 - Page 54

his concern did not make a substantive change, and therefore I changed it with this language to address that concern. 048 CHAIR SMITH: Page 20, number 4. 050 VAN ALMEN: I believe that this language in 4, is the language that Sen. Rasmussen suggested, and that the committee agreed to. 052 CHAIR SMITH: Yes, this is exactly what we agreed to. Now, Sen. Bryant, let's not fight the fight again. 054 SEN BRYANT: NO, two things I would like noted on the record, and I think it is already on the record, that I objected to this language, but secondly, on what's proposed I was going to suggest the deletion of the word directly, and have it read relates to the relationship between the charging party and the respondent.

059 SEN. RASMUSSEN: I specifically put the word directly in, because otherwise, you are back dooring your earlier argument, because you can interpret, unless such evidence relates to the relationship between the charging party and respondent, then you can get in a third person's discussion of that relationship, because it is not direct.

066 CHAIR SMITH: I think there was a particular reason to have that word in there, Sen. Bryant, and I know that you object to the language, and in fact, the concept, so, I have that language written, and I believe I read it back several times the other night in committee. This was conceptual only, in the fact that it was not printed on the page. Is there anything else? 073 SEN. DUKES: Just because somebody raised the questions as to what on earth did it mean, and we actually put a comma in on Right to Representation, number 1. Prior to hearing comma all communications, because otherwise it does not make sense.

082 VAN ALMEN: The footnote that I had it written out before, it is just a style change, it is not a substantive change, and I put a footnote number above committee reports, and then intended to treat that what was before, more looking like part of the rule, just to treat it as a footnote to the rule, because it really was not directing anybody to do anything, it was just an explanation of subsection 4 of your main Senate Rule. 088 SEN. BRYANT: Going back to page 18, and without opening anything substantive, under witness immunity, number 1 and number 2 do not make sense, they are inconsistent, I think.

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091 BEAUFIT: They are the words of the legislative assembly, unless something has gotten lost in the typing, that is a direct quote of ORS 171 .525. I have not proof read this version against, I know, problems with the disc. It is my intention that that is simply a restatement of the statute for the convenience of those who have only your rules to look at. 098 SEN. BRYANT: Well, here is the inconsistency. 1 says Any testimony given by a witness before the committee shall not be used against the witness in any criminal action or proceeding. Then we say, no criminal action or proceeding shall be brought against the witness on account of any testimony given by the witness except for perjury. In the first one, we do not have the exception for perjury, so they are inconsistent there, and why would we need the first one if we have the second one, because they both seem to try to accomplish the same purpose. 105 CHAIR SMITH: Well, one says you cannot hold the testimony against them in perhaps any current criminal proceeding, or future. The other one says it cannot be the reason for a criminal proceeding. 109 SEN. BRYANT: The other one then is that you might be granting some criminal immunity here to someone you do not want to grant it to. If we have a date rape situation, and the respondent's best course might be to go through this process, rather than a criminal one. - 118 CHAIR SMITH: Yes, that is true, we discussed this in committee, and we determined that we would not proceed with any investigation, if there was a criminal investigation in progress, or a criminal proceeding in progress, for exactly that reason. 122 SEN BRYANT: But we are on such a short time frame here. There may not be one m progress. 123 CHAIR SMITH: We are not on such a short time frame. You are assuming that the act happened fifteen minutes prior to the person coming in filing the charge. I would not assume that. We can re-write this, the language I think belongs in the rule, because it is in the statute, and it allows people some knowledge, without searching statutes. We can re-write it to exactly reflect the single sentence language of the statute, rather than separating it out as two clauses. 131 SEN. HAMBY: I would be far more comfortable if we took another look at Witness Immunity, and especially after learning from Oliver North, that is the last thing 132 CHAIR SMITH: What would we look at Sen. Hamby, can you suggest what you would like to see us do. - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate committee on Sexual Harassment April 8, 1993 - Page 56

134 SEN. HAMBY: I guess the other night, when either we were so tired, or whatever time it was, I have not read Witness Immunity, and I guess mentally, I guess I was just not quite here, but as I read it last night, I really became concerned. 138 CHAIR SMITH: What could we do to change it. We have no options. The statute says this is the way it is. 140 BEAUFIT: One of the things in the congressional hearings, they were warned about the problem that they were treading into. The situation you avoid with the I committed murder is to make very, very sure that the scope of what your committee is talking about does not include exculpation for all kinds of conduct unrelated to your hearing. You have to control, and not getting into areas that are not the areas that are the narrow, confined and concentration of your committee. The question becomes the policy of getting into an area that parallels an area that can be subject to a criminal investigation. There, the very hearing was the question, has he broken laws relating to. 155 CHAIR SMITH: That was the purpose of that hearing to determine he had violated

the statutes by lying to congress. In our case, we are trying to determine sexual harassment occurred, if I would assume, by the time we get to this point, we are going to have some knowledge of whether or not the person is alleging that rape occurred, or any other criminal offense, and if it did, we will act accordingly, by limiting the scope of what we do, or putting it off altogether. 163 SEN DUKES: It is my hope, that if someone goes to counsel feeling all of this out, and says, I was raped, that counsel will inform them that they have the option of criminal proceedings as well. They have a year, after the incident happens, in which to go through this process. I do not know what the statute of limitation is through the courts on rape, but they may want to pursue it in both avenues. 170 CHAIR SMITH: I would assume, if there is some possibility of criminal behavior in all of this, that the person who feels the victim of that behavior will go to the police first. Or, if they come and talk to counsel, that counsel will advise them to go through the judicial process with a criminal complaint. Clearly, this is secondary to any criminal judicial process. 178 SEN. BRYANT: One other question along these lines. 178 CHAIR SMITH: If this is still on immunity, I still have not gotten the answer to my question about whether or not you would like this to exactly reflect the statute, rather than set out the two points in the statute separately.

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180 SEN. BRYANT: I think we should follow the statutes. 181 CHAIR SMITH: The rest of you - that's fine? OK, this will be re-written exactly as the statute. 184 SEN. BRYANT: Sen. Rasmussen may help me with this. When we say no criminal action or proceeding shall be brought against the witness on account of the testimony, would that also preclude a civil action by the charging party, because the testimony would be involved. 188 CHAIR SMITH: Ms. Beaufait, does this immunity clause, does it count with civil proceedings, as well as criminal proceedings, or is it strictly related to criminal proceedings.

191 BEAUFAIT: Historically, the entire reason for this immunity is from criminal prosecution. And the civil prosecution has to be resolved in other ways. 196 SEN. DUKES: My understanding has always been of the statute, not that a criminal proceeding could not happen, if they went out there and did their investigation, and found their own stuff, but you do not walk into a trial and say, now I heard you say in front of this Senate Committee.... 200 BEAUFAIT: That was one of the debates in the prosecution of Col. North's case as to whether or not they had relied so heavily on the congressional testimony, or duplicated it to the extent that it tainted their evidence in the courtroom, that they did not have new evidence to charge. 205 CHAIR SMITH: I have no other conceptual amendments noted, other than the ones that we have done, are we there. Does anyone have any thing else? 208 SEN. HAMBY: I have nothing significant except that following this recent conversation and the rape potential, etc., I noticed that on page 2 we do not remind Committee Counsel to give the other options available.

212 CHAIR SMITH: We do that, I have read this 50 times, somewhere, Sen. Hamby, let me find it. We do that in the Notice of Right to File a Charge, page 6 number 8. There may be other legal remedies, which have filing deadline requirements. In order to understand how they may apply to your situation, it is best to consult with an attorney in private

practice, who is experienced in sexual harassment cases. 224 VAN ALMEN: The committee has in it's notebook an extensive opinion from the Attorney General on civil action limitations, and I do not know if the committee has been able to read that or not. The BOLI, at least at the point in time in which

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this proceeding would be coming about, would not be an option, and therefore counsel could not advise the party to do that, at least at that point in time. 234 CHAIR SMITH: During the legislative session, BOLI and EEOC, and private lawsuits ...

236 VAN ALMEN: EEOC would be an option. 236 CHAIR SMITH: During the session? They had a lot of trouble with that decision didn't they. 240 VAN ALMEN: The EEOC would be an option, any federal investigative or administrative proceeding meeting the EEOC, or any federal claim, would be an option. BOLI would not. I think that if you incorporate anything more than that, it puts Committee Counsel in a precarious position, of a mistaken feeling that you are becoming counsel to the party, and you are not. 251 CHAIR SMITH: Other than scrivener's errors, that is inadvertent additions or deletions that occurred because of our computer problems, or whatever, are you now satisfied that the rules reflect what we agree to.

255 VAN ALMEN: I would like to tell the committee how I am sorry for the problems that the committee experienced with these changes, and I hope we will not have the same problem again. 260 CHAIR SMITH: We are now comfortable with everything short of scrivener's errors, you are going to go away and submit those if you find any to counsel, please. How long would you like, before she is going to print out the real honest to goodness final version of this thing. Shall she do that in two days, this is Thursday, shall she do that on Monday. She will print them out on Monday, if you have scrivener's changes that you would like to present to her, please do it prior to noon on Monday. 273 SEN BRYANT: Do we vote on these again?

274 CHAIR SMITH: NO, we do not. 275 SEN BRYANT: How do we incorporate the changes. 276 CHAIR SMITH: We did make a couple of substantive changes, didn't we. SEN DUKES: I move that we adopt the rules as amended today, with the exception of any scrivener's changes that will be made by noon on Monday.

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288 CHAIR SMITH: Sen. Adams indicated that he was concerned about the time frame in the witness lists. 291 SEN. BRYANT: I believe he also wanted to read over his old notes on the old sheets to make sure nothing else was dropped. 295 CHAIR SMITH: Let's go ahead and do this. If Sen. Adams wants us to come back and change the time requirement in the exchanging of witness lists between counsel and parties. We will consult with Sen. Adams about what exactly his concern, requirement, or a

suggested change, if he has one, is, and if he wants to change that part, I will come to each of you, and we will decide whether or not we want to come back and do it in the committee, or if it is merely a ...  
315 VAN ALMEN: You have got it covered, I think, in 6, where you have the authority to enlarge the time frame. 320 CHAIR SMITH: We will talk to you about any changes Sen. Adams wants to do, and if we want to come back and do them, we can come back and do them. Can we vote on what we have done today. Sen. Dukes has moved that we adopt the rules as we have amended them today. Motion passed. Meeting adjourned.

Reviewed by:

Pamela Stfani, Committee Coordinator

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