

SENATE COMMITTEE ON SEXUAL HARASSMENT

March 29, 1993 Hearing Room B 12:30 p.m. Tapes 1 - 8

MEMBERS PRESENT: Senator Tricia Smith, Chair Senator Brady Adams
Senator Joan Dukes Senator Jeannette Hamby Senator Karsten Rasmussen
Senator Neil Bryant

STAFF PRESENT: Joan Van Almen, Committee Counsel Stasi Kitchen,
Committee Coordinator

Organizational Meeting

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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. [--- Unable To Translate Graphic ---]

TAPE 1, SIDE A

001 CHAIR SMITH: Calls meeting to order at 12:45 p.m.

003 CHAIR SMITH: Introduces Committee Members and Counsel. -Declares intention of adopting Committee Rules.

020 JOAN VAN ALMEN: States these are the proposed rules with which the committee will operate during the procedures of the rules process (EXHIBIT A). This allows for adoption of the rules that are generally stated in the draft.

028 CHAIR SMITH: These rules allow the chair to schedule meetings, refer to issues like majority votes, as well as other related issues.

033 SEN. ADAMS: There has been a preliminary draft of some committee rules regarding confidentiality. Is there a problem with 3B--the rule that allows for public hearings?

039 CHAIR SMITH: We will only be using these preliminary rules while we adopt the rules of the committee.

044 MOTION: SEN. BRYANT: Moves to ADOPT the Proposed Committee Rules dated numbered 1 - 9.

042 VOTE: CHAIR SMITH: Hearing no objection, the motion CARRIES. All members are present. 051 JOAN VAN ALMEN: Refers to full Senate rules that include 18.01 and 18.02 that directly deal with sexual harassment. Other exhibits provided as a reference. States order of exhibits. -1. "Persons within the scope of the rule..." -2. "Procedure for filing a charge..." -3. "Notice to employee of right to file a charge..." -4. "Confidentiality of a charge..." -5. "Notice to

the respondent of the charge..." -6. Notice to respondent of charge sample form -7. "Investigation of the charge..." -8. "Investigative report" -9. "Post-investigation procedure" -10. "Complaint procedure"

089 CHAIR SMITH: Wants to adopt rules up through and including the section on Investigative Report. Has intention of returning as a committee to adopt the remainder of the rules at a later date.

114 JOAN VAN ALMEN: Other states have similar procedures, but not necessarily in this exact process and context.

162 CHAIR SMITH: Introduces witnesses from Legislative Counsel and the Attorney General's office.

172 SEN. ADAMS: Asks for clarification on the adoption of rules. -What happens when charges are brought against a senator by another senator or lobbyist?

177 CHAIR SMITH: Clarifies that the drafted rules include these types of employees.

187 DON ARNOLD, CHIEF COUNSEL, DEPARTMENT OF JUSTICE: Has received a copy of the drafted rules. The committee has a substantial amount of discretion in determining who and what kind of processes exist in the rules.

200 CHAIR SMITH: Asks Arnold if lobbyists and senators could be included in the rules.

206 ARNOLD: The committee could include both categories to file complaints, however, the farther you get from "SENATE EMPLOYEES," the more questionable the authority becomes.

215 SEN. ADAMS: Could the rules be written to include highly specific language to include lobbyists, senators?

222 ARNOLD: Replies that they could be written as such.

224 CHAIR SMITH: Does not want to put a rule in place where a lobbyist could complain against another lobbyist. The intent of the senate is to include employees of the Capitol.

238 SEN. ADAMS: Asks if there are already rules in place regarding lobbyists?

243 CHAIR SMITH: Comments that this committee is not the forum for the complaints regarding lobbyists.

257 JOAN VAN ALMEN: To clarify, describes the list of applicable employees (EXHIBIT).

282 ARNOLD: Lobbyist actions toward senate employees or legislators can be included within the scope of the rule. Lobbyist conduct against other lobbyist may not be included.

294 SEN. DUKES: Would like to see the employee/lobbyist issue addressed in the rule.

301 CHAIR SMITH: It speaks to the intent of the body to prevent harassment involving the Senate as a whole. The rules are general

enough, however, to amend this section.

339 SEN. ADAMS: Voted under the impression that the rules were broadly defined. Understands the argument about the exclusion of cases involving lobbyist against lobbyist as a specific exemption.

356 CHAIR SMITH: States that any additions to the rules must be moved by a member.

361 JOAN VAN ALMEN: Employees included in the rules are addressed in Sections 15.01 - 15.05. -Lists employees.

379 CHAIR SMITH: Suggests the removal of rule #2 regarding political parties.

387 JOAN VAN ALMEN: Continues with listing employees.

397 SEN. ADAMS: Asks if Floor Staff should be included.

401 JOAN VAN ALMEN: Floor Staff falls under the category of Personnel.

405 SEN. ADAMS: Asks about the inclusion of Honorary Pages.

TAPE 2, SIDE A

009 SEN. DUKES: Indicates that Honorary Pages are not paid employees.

012 KATHLEEN BEAUFAIT, LEGISLATIVE COUNSEL: States that Interns and Honorary Pages fall under the umbrella of protection.

013 SEN. DUKES: However, interns are listed separately in the rules, so should be listed Honary Pages, who are not hired.

027 SUE WILSON, LAC ADMINISTRATION: On occasion, interns will work in committee offices and are protected along with those interns working for legislators.

031 SEN. ADAMS: Suggests changes in the rules to include all interns.

041 JOAN VAN ALMEN: Restates employees included in the rules with suggested changes. -1. ALL employees hired under Senate Rule 15.01 - 15.05 who may bring a charge in complaint are:

046 SEN. RASMUSSEN: Would delete "all."

048 CHAIR SMITH: Affirms the deletion of "all."

049 JOAN VAN ALMEN: Continues with listing employees.

078 CHAIR SMITH: Would change first word to "persons," not "employees."

080 SEN. ADAMS: Suggests that Subsection 4 include senators.

091 SEN. DUKES: Expresses concerns with folding lobbyists into the category of individuals who are included in the rule. Those who fall under our umbrella of employment, paid or not, are interested in

seeing that they were protected. Lobbyists are here because they want to be, not because the Legislature has recruited them.

103 CHAIR SMITH: Lobbyists should be able to testify regarding their inclusion in the rules, especially if a lobbyist has been assigned to a senator and the behavior occurs.

123 SEN. ADAMS: States that lobbyists were included in the adopted rules.

136 SEN. ADAMS: There are some circumstances where employees are not covered by various policies. Do we create any kind of problem where the potential of two contradicting processes are in place?

143 BEAUFIT: Lists several offices that have such dual processes.

151 CHAIR SMITH: The purpose of the procedures we are looking at today get us through the charges that are being placed. 163 WILSON: Indicates that in this case, there will not be much overlap.

181 CHAIR SMITH: If the rules are adopted so that the person bringing the complaint is under another appointing authority other than the senate, that person has the option to go through the process linked with his or her employer.

188 JOAN VAN ALMEN: This process does not intend to supplant other avenues available to the complainant.

231 WILSON: States that for the employees of LAC, there is a clear and specific route taken by the administrator in terms of filing and processing a charge.

241 JOAN VAN ALMEN: Under the rules, the LAC employees may take an investigation to the Committee on Sexual Harassment.

247 BEAUFIT: Disagrees, states that all personnel are not within the scope of the senate rule.

264 CHAIR SMITH: It would give an employee a choice between two processes, but they do not necessarily have to.

275 SEN. ADAMS: Couldn't we have two investigations by two different bodies?

280 JOAN VAN ALMEN: Those employees who could file a complaint under the rule would also have a parallel course of action within Administration.

285 WILSON: Disagrees; the Administration Staff does not fall within any categories listed in the rule.

304 BEAUFIT: There are no sanctions that the committee may instate against an employee, only interagency remedial action.

313 CHAIR SMITH: The only authority we have is to alter the work environment.

318 BEAUFIT: ...

321 CHAIR SMITH: Legal liability only lies in remedying the workplace environment.

335 SEN. DUKES: Asks Beaufait if the rules between LAC and the Senate are similar in regards to sexual harassment.

338 BEAUFAIT: Replies that they are with the exception of the individuals covered by the rule.

341 SEN. DUKES: Asks about a potential conflict in filing a charge under two sets of rules.

348 BEAUFAIT: No, because the first finding would most likely be that the individuals are not employees of the Senate.

353 WILSON: The classification is STANDING COMMITTEE employees (appointed by the Senate President for Session) as opposed to STATUTORY COMMITTEE employees.

357 CHAIR SMITH: What about the investigative procedure? -Is there something to prevent the committee from including statutory committee employees?

391 BEAUFAIT: The statutory committee remains the appointing authority, legally liable for the employee.

TAPE 1, SIDE B

011 SEN. ADAMS: Remarks that the committee needs to clarify in the rules that they only have jurisdiction over senate employees. -Would like to have the ability to apply sanctions against a senator and believes that all charges involving senate staff should be brought under the senate rule.

051 CHAIR SMITH: Would still include the statutory committees in the process so they are aware that there is a problem.

077 SEN. ADAMS: Asks if there is a subset of employers other than the senate defined in the rules.

084 BEAUFAIT: The senate may have appointing authority, but the State of Oregon is the employer.

087 SEN. ADAMS: Do they have another employer who may be jeopardized by the Senate rules?

088 BEAUFAIT: Since there is not a legislative hierarchy, the State would be the liable party.

124 CHAIR SMITH: Does the committee want statutory committee employees included in the rule?

129 SEN. ADAMS: Replies that he would like them included for purposes of specific jurisdiction. -Only include statutory committees when the charge involves a state senator, lobbyist, or any employee the Senate has hired.

153 BEAUFAIT: Asks committee to consider House employees who may file a charge against a senate employee.

159 CHAIR SMITH: There needs to be some ability of a House employee who is being harassed by a Senator to file a complaint.

168 SEN. ADAMS: Since the committee has added interns and honorary pages to the category who can file a charge, we need some language in the rule that states that they can be charged as well.

176 CHAIR SMITH: Such language would not be feasible because the rule is specific in stating senators, lobbyists, and employees of the senate.

194 SEN. ADAMS: Expresses concern because interns, who can potentially be harassed or harass, should be included as those individuals in the rules.

208 SEN. DUKES: Since interns are not employees and work at the discretion of the Senate, there is no legally binding employer/employee relationship. That is the basis of the ability of one to file a charge--the workplace must be jeopardized.

262 SEN. DUKES: Confirms the addition of number 6 (employees of statutory committees).

276 JOAN VAN ALMEN: Addresses the charge of sexual harassment.

290 SEN. DUKES: Asks if the charge, prior to its being written by Counsel, is formal.

295 CHAIR SMITH: Replies that no, there will be a difference in the rule between a complaint and a charge.

316 SEN. DUKES: What would happen if someone were to contact counsel, indicate that they are a victim of harassment, and choose not to go forward with the charge? Does the language require counsel to reduce the complaint to writing?

327 JOAN VAN ALMEN: Counsel will help the individual assess the actions and discuss options of proceeding. A charge will not automatically be reduced to writing.

TAPE 2, SIDE B

010 SEN. DUKES: I do not agree, what I meant...to put in writing...first meeting...states language..

016 CHAIR SMITH: this does not presume the committee meeting...

018 SEN. DUKES: I am not sure you want that in there...

021 JOAN VAN ALMEN: That was not my intention...

023 CHAIR SMITH: before the charge is brought to the sen. president it has to put in writing...

028 SEN. DUKES: ...

029 SEN. ADAMS: add language...

030 SEN. BRYANT: ...

032 SEN. ADAMS: ...

033 JOAN VAN ALMEN: ...

036 CHAIR SMITH: ...

037 SEN. ADAMS: on the first number charge is in quotation marks, what is the defination...

042 CHAIR SMITH: to bring to attention of the committee that charge is different from complaint...

049 CHAIR SMITH: committee comfortable with waiting until next meeting for written defination....

054 SEN. DUKES: when we finish today we will have...

058 kb: reorganizing the material not changing teh substance...

061 CHAIR SMITH: written allegation...

064 JOAN VAN ALMEN: continues...

074 SEN. BRYANT: intent to sign the charge at some point....sworn signature...

078 JOAN VAN ALMEN: the point at which they want to go forward at a public hearing then at that point...

083 SEN. BRYANT: ...cause for thought...even at the charge level for a true statement...

088 JOAN VAN ALMEN: you don't want to make this so formula that people are afraid to use it...

112 SEN. ADAMS: notice...require the respondant to sign the charge...

116 CHAIR SMITH: ...that it not necessairly be sworn...

120 SEN. DUKES: the way two step process is handled...I liek the idea of the unbaised third party, investigation before the indivudal deciding... 132 CHAIR SMITH: victim may not be certain, unsure that it is actually sexual harassmt or an offhand remark, this would give some unbaised fact finding to both the complaint and the respondant, that it would give both parties a better understanding that what happened fits into our description of sexual harassmt, and not force them to put everything out there in the committee process, the second reason is that it gives the committee some place to start from and allows us to be more objective, rather than allowing us to shoot off into side areas...task at hand...all of these rules...

158 SEN. DUKES: the first part that does not make alot of sense to me...opinions are widely different in this issue...rather than having someone coming in who is unsure, be able to come in and talk it through with someone and then decide to move forward, an outside investigation is a costly process, it is very public, if it did not happen you have someone being dramatized as having it happen, I would rather they made that decision earlier than later...

183 SEN. ADAMS: Would it be possible to take of concern if we had a preliminary step, as to whether this has happened...

193 CHAIR SMITH: that puts alot of power in the hands of the counsel of the committee...that determination cannot be made...let us go through the rules...

221 JOAN VAN ALMEN: continues ...

251 SEN. BRYANT: my suggestion would be environment free of sexual harassment...not discrimination...last paragraph will have to change according to what we have already agreed...

263 JOAN VAN ALMEN: unless you ammend the rule these are the only persons that the charge can be made against?..

269 CHAIR SMITH: we have not made that distincition yet..

273 SEN. ADAMS: what we are describing will fall against that umbrella that has already been described...

279 CHAIR SMITH: yes.

280 JOAN VAN ALMEN: continues...

291 CHAIR SMITH: there is a request for an opinion of the atty gen on three issues 1) immunity under consitution, 2) boli's ability, 3) who is an employee...Mr. Arnold is here with us, the atty gen. opinion is not ready yet, he can speak to the first ...

316 ARNOLD: we don't want to be very specific where the opinion is heading...we did talk re conclusions re ammunity...both with regard to any potential re federal or state legislatures are immune from process during session, any procedding cannot take place till after session, civil process..so those things would be on hold during the course of the legislative session..

341 CHAIR SMITH: according to the atty gen a complaint cannot ...until after session...

348 SEN. DUKES: complaint, under these rules, moving forward, sen., refused to appear or corporate, committe authority to supenoa...

360 ARNOLD: no.

362 SEN. DUKES: my question is legal proceding of supeona, could we...

370 ARNOLD: yes, process internal to the senate...

375 SEN. ADAMS: add language..

376 CHAIR SMITH: Yes.

380 SEN. BRYANT: there may be another problem if there were potential criminal procedures pending, how this ways into this an how we work into that...

390 CHAIR SMITH: next week...

393 kb: it is covered by statute, the privileges and immunities due appear...

406 SEN. ADAMS: suggest we correct the word shall...

Tape 3, Side A

001 SEN. DUKES: I also disagree take the shall out...signed complaint...is there a two step charge...

019 CHAIR SMITH: when a person comes to the counsel of committee, states charge, lists options, person makes charge...then the charge is reduced to writing, what b says if the allegations are within the scope of the rule, then requirements have been met...the notice until the employee is elected to file...our intent was to give the employee the option to go forward in the process or drop it if it is too heavy...force process before comfortable, concerned...

043 SEN. ADAMS: ...

050 CHAIR SMITH:....

051 SEN. ADAMS: ...

055 CHAIR SMITH: ...

056 SEN. BRYANT:...respondant ...

059 CHAIR SMITH: refers to chart..exhibit?...

068 SEN. ADAMS: I am not comfortable with that..concern going through this box with information sharing, you have someone in a difficult position, you have no way to make this public due to confidentiality...

071 CHAIR SMITH: what is the best option?

079 SEN. DUKES: if there was complaint it needed to be a public process...there is a roadblock...protect both of them...the complaint needs to make a decision as early as possible...

101 CHAIR SMITH: we have three possibilities 1) substantial cause 2) there is not substantial cause 3) the evidence is inconclusive...they can happen in this report...we are not going to get our rule done today...

117 SEN. HAMBY: questions dukes concern...

121 SEN. DUKES: explains concern...

136 JOAN VAN ALMEN: one of the things that may come up has to do with...

148 CHAIR SMITH: sen. president has a responsibility and liability...we still have a report that has been generated...chooses not to go forward in the public process...

173 SEN. ADAMS: still has concern to do something differently than what is proposed...

178 CHAIR SMITH: need to do today...allegations floating in the press

that are going to require immediate action by the body...would you feel comfortable today, knowing that we are coming back next week to adopt the whole set of rules to allow us that process to hire the investigators, for what is sitting out there now or leave it out there and deal with this...

197 SEN. HAMBY: do we have to our recommend the investigator be hired. I am not comfortable ...

202 SEN. RASMUSSEN: we need to leave today with some kind of clear direction...everybody who is concern with that process, I feel comfortable...

209 SEN. ADAMS: we need to becaareful of those who are making the charge because we did not draft this right I disagree find another room and continue...

221 CHAIR SMITH: it is very important for everyone involved who may be invovled in this process, we need rules in place ...that requires action by the committee, appreciate your concerns...we have a 24 hour rule we can recess until 5:30 rm d

RECESS UNTIL - 5:30 PM - HEARING ROOM D

225 CHAIR SMITH: reconvenes the meeting at 5:40 p.m.

226 JOAN VAN ALMEN: continues..

239 kb: legislative employees, honoary page an employee in any sense...uncomfortable with.

250 SEN. ADAMS:

251 SEN. HAMBY: moves to delete honary page number 3, renumber them..

256 JOAN VAN ALMEN: continues

263 SEN. RASMUSSEN: should read shall rather than will.

265 JOAN VAN ALMEN: continues.

299 SEN. RASMUSSEN: first line, can should be may, second lh verifies signature and date becomes a stronger debate, I have concerns about..

310 CHAIR SMITH: Sen. Dukes has concerns we will come back to this point.

314 JOAN VAN ALMEN: continues with discussion of changes.

321 CHAIR SMITH: once the charge has been made the preliminary investigation will go forward.

327 SEN. HAMBY: 3 sub c,...

331 SEN. BRYANT: at the..

334 CHAIR SMITH: delete at

337 JOAN VAN ALMEN: addition to sub 3 343 SEN. ADAMS: sub 3 a,c,d
the word employees is used..

345 JOAN VAN ALMEN: person filing the charge..

352 CHAIR SMITH: we will make that change..

356 JOAN VAN ALMEN: continues with discussion of changes.

Tape 4, Side A

031 CHAIR SMITH: this is a point we need to discuss as a
committee. May we set that issue aside so that we can get through the
rest of the proposal.

039 JOAN VAN ALMEN: continues with discussion of
confidentiality of charge.

050 CHAIR SMITH: does the committee have any questions
regarding confidentiality?

054 JOAN VAN ALMEN: continues with discussion of
confidentiality.

057 SEN. ADAMS: we need to change employees to persons filing a
charge, the meaning of the last sentence?

065 JOAN VAN ALMEN: if an investigator has information, they have
to say...in order for it to make sense, the investigator needs
to have sort of running room within the investigation...they are the
core of all the information...

077 SEN. ADAMS: how much of that information would be
available to the committee members?

081 CHAIR SMITH: they have no access.

083 SEN. ADAMS: at soem point will the committee have access to the
information?

086 JOAN VAN ALMEN: depends upon what is decided...

091 SEN. ADAMS: the investigator does not have the ability to keep
information from the committee?

095 CHAIR SMITH: no.

097 SEN. HAMBY: meaningful investigation instead use thorough
investigation.

100 CHAIR SMITH: Yes.

102 JOAN VAN ALMEN: continues.

123 CHAIR SMITH: it is important in the rules to have listed
specific information regarding the information..

132 SEN. ADAMS: where does it provide that I may ask for the
information..

137 CHAIR SMITH: during the preliminary investigation the committee may not have that information, once the investigation is within the committee then access is given..the language will be discussed on Monday.

149 JOAN VAN ALMEN: continues...

155 CHAIR SMITH: where you see timely within the rules you have the ability to place a specific time...

172 SEN. HAMBY: would three days be ...

174 JOAN VAN ALMEN: you would want to do it earlier..

178 CHAIR SMITH: two working days..

180 SEN. ADAMS: does the senate president recieve an answer...

184 SEN. DUKES: can you say within 24 working hours, something to tie it in to working days..

191 JOAN VAN ALMEN:

194 CHAIR SMITH: I feel with three is two is more appropriate.

197 SEN. BRYANT: lobbyist has an address within the state of Oregon..

202 JOAN VAN ALMEN: they can state they did not receive...

205 SEN. HAMBY: personnel or certified...

209 CHAIR SMITH: shall timely but in no case later than two working days...personel and confidential or by certified mail

222 SEN. RASMUSSEN: or by mailing by certified mail, you need the two days by mailing...

233 CHAIR SMITH: certified is not necessarily return receipt requested...

237 SEN. RASMUSSEN: if we place....

242 SEN. HAMBY: prefer return receipt requested...

245 SEN. BRYANT: certified... 248 SEN. ADAMS: registered mail...

250 SEN. RASMUSSEN: return receipt received/

252 CHAIR SMITH: it does not.

256 JOAN VAN ALMEN: continues.

274 CHAIR SMITH: There is no specifics of the charges being made only that the charge has been made.

290 JOAN VAN ALMEN: continues...

292 CHAIR SMITH: this is the notice not the charge?

296 JOAN VAN ALMEN: we are sending them a copy of the charge..
continues.

317 SEN. RASMUSSEN: change the word must to shall.

321 CHAIR SMITH: yes.

323 JOAN VAN ALMEN: continues...

326 CHAIR SMITH: we will come back and deal with that.

330 JOAN VAN ALMEN: continues.

332 SEN. RASMUSSEN: will replaced by shall.

333 CHAIR SMITH: yes.

338 SEN. BRYANT: can the respondent ask for additional time to
respond? from the sen. pres.

343 CHAIR SMITH: the language is not in here?

344 SEN. BRYANT: it should be.

349 CHAIR SMITH: the senate president is not involved at this point.

357 SEN. ADAMS: notice 1b

361 CHAIR SMITH: change the wording...notice the respondent of charge
of sexual harassment..

373 SEN. ADAMS: two documents that are referred to, where is the
notice to procedure and rights, notice to charge...

389 JOAN VAN ALMEN: the rule is notice of charge of sexual
harassment, it should be called the charge shall be accompanied
by a notice of charge...

399 SEN. ADAMS: do we need to provide under c1 that statement again?
It seems redunant.

Tape 5, Side A

001 JOAN VAN ALMEN: the first is intended to tell that the charge
has been made, the second is to state who else gets the charge, and
then once you get it what else do you receive...

013 SEN. ADAMS: change notice of charge to procedure and
rights..

017 JOAN VAN ALMEN: Yes.

018 SEN. ADAMS: send employer notice of procedure and
rights...

020 CHAIR SMITH: send the employer a copy of the notice and
procedure and rights in b call it notice of procedure and rights. on
the notice to repsondent of charge 1b we do nothing, 2b a copy of
the notice of procedure and rights, 1c we leave alone.

040 JOAN VAN ALMEN: continues..

059 SEN. RASMUSSEN: other persons provided with notice of is a statement of fact?

063 CHAIR SMITH: yes.

064 SEN. ADAMS: notice of procedure of rights...on the previous page the respondent must respond within four days...consistency put the same sentence in here...

075 CHAIR SMITH:...

076 JOAN VAN ALMEN: we do not have a form for the answer...

080 CHAIR SMITH: lets add that...

088 SEN. DUKES: ...

100 SEN. BRYANT: ...if this occurred during the intermin that might take a little more time, and also there may be a need to do a little investigation by the respondent before he responds...

109 CHAIR SMITH: how much time...

110 SEN. BRYANT: leaving at four days and then granting additional time, the only other person besides the president would be the committee counsel... 115 CHAIR SMITH: concern in delaying the response is that it is delaying the process that has timeline all the way through it, what would it do to that time frame?...

120 SEN. RASMUSSEN: ...outside challenges to do process here...

124 SEN. BRYANT: due process argument, if the atty want to hire on vacation...the person being accused needs to have a good reason...

131 CHAIR SMITH: example..

132 SEN. BRYANT: leave a little room or face a due process problem, be a little cautious in that regard...

134 CHAIR SMITH: will that delay the beginning of the investigation...how will a delay in the response from the respondent delay that investigation..

143 SEN. BRYANT: the investigator may still begin...

145 CHAIR SMITH: sen. president extend time frame but not more than x amount of time, should we place parameters...

152 SEN. RASMUSSEN: leave president out and make it seven days...there are still due process...

158 CHAIR SMITH: the committee's response on seven days...

169 JOAN VAN ALMEN: there is a provision that allows each party to submit written statements..

166 SEN. HAMBY: and delte working.

174 CHAIR SMITH: investigation of the charge...

176 SEN. BRYANT: deliver or mail the response..?

178 SEN. HAMBY: might hurry them up?

188 JOAN VAN ALMEN: continues..

200 CHAIR SMITH: committee questions?

201 SEN. DUKES: all of a,b,c,d

202 CHAIR SMITH: yes

203 SEN. DUKES: what does d mean?

205 CHAIR SMITH: striving for some language..gives example of political buddy, we are stuggling with this language.. 216 SEN. DUKES: define within the record..

219 JOAN VAN ALMEN: trying to minimize the ...political process...

223 SEN. DUKES: contributor?

225 SEN. ADAMS: previsouly contributed to your campaign, or worked on or for your campaign, or for you..

230 SEN. DUKES: that would narrow it down...

232 SEN. ADAMS: ...we would not want to hire an ...

238 SEN. BRYANT: respondent

239 SEN. DUKES: or complainent.

240 CHAIR SMITH: ...

243 SEN. ADAMS: if the respondent is the sen. president there is no language to deal with this...we have not allowed for that in this rule...

253 SEN. ADAMS: could one designiate that the fall would be the chair of the committee under rule 1.

259 CHAIR SMITH: yes. can you help us with the language in 2 d to make it a bit cleaner..

264 SEN. ADAMS: no direct political connection to any one in the senate, anyone who has worked on or for a campaign committee or the members...

272 CHAIR SMITH: my concern is that we try to encourage everyone to do those types of things...

278 SEN. ADAMS: i disagree

282 CHAIR SMITH: Is it important that this person has no political...

287 kb: connection with the committee...

291 SEN. BRYANT: imparitial and fair...

295 CHAIR SMITH: no..

297 JOAN VAN ALMEN: that is the question you will have to answer...

300 SEN. HAMBY: conflict of interest... 303 CHAIR SMITH: ?...

307 kb: ...

308 hamby; perceived...

309 kb:

312 SEN. RASMUSSEN: leave as is...

316 CHAIR SMITH: leave as it, the ocmmittee agrees..

320 JOAN VAN ALMEN: at the end of each one add and so that it is clear that they are all together... continues.

344 SEN. RASMUSSEN: should be shall and may instead of will and can..

349 CHAIR SMITH: yes.

353 JOAN VAN ALMEN: continues.

369 SEN. ADAMS: I think the number one should be in front of the investigator, there is no break...

378 CHAIR SMITH: ...

380 SEN. ADAMS: one before the investigator, do not put numbers put bullets.....

388 SEN. HAMBY: do we normally use bullets in rules?

393 CHAIR SMITH: no, we can use... or Roman numerals.

Tape 4, Side B

001 JOAN VAN ALMEN: continues.

017 CHAIR SMITH: ...

020 SEN. ADAMS: if the witness does not agree to sign, then I am prohibited from using the testimony in my report?

025 JOAN VAN ALMEN: no, the idea is that you may take down notes in a formal statement, the point is that you are giving them an opportunity to say yes that is what I say and stand behind...it would not mean that the investigator cannot use it, they have the authority whatever information they find...

039 SEN. ADAMS: gives example being respondent...may I challenge the whole conclusion because it is not signed...

047 SEN. RASMUSSEN: change may for shall each interview may be signed instead of shall be signed...

052 SEN. BRYANT: ...

053 JOAN VAN ALMEN: ...

054 SEN. BRYANT: ...

056 JOAN VAN ALMEN: continues

057 SEN. BRYANT: we need to allow a bit of discretion there...the respondent states, gives example, I would want the investigator to have some discretion there...

066 CHAIR SMITH: I would rather say that the investigator shall unless, rather than open it up...

070 SEN. RASMUSSEN: that is find...

072 SEN. BRYANT: shall attempt to interview witnesses identified by either party by the charge...

076 JOAN VAN ALMEN: material witnesses...

078 CHAIR SMITH: ...every material witness...

081 SEN. BRYANT: attempt...

083 CHAIR SMITH: reads ...

085 bryant; reads new wording...

087 CHAIR SMITH: Yes.

091 JOAN VAN ALMEN: continues.

094 SEN. RASMUSSEN: that leaves open the possibility that someone...

097 CHAIR SMITH: if there are not authorized to receive the report they cannot receive any information..

101 SEN. RASMUSSEN: ...

103 CHAIR SMITH: that is not our intent..

105 SEN. RASMUSSEN: ...until the investigative report is final and then shall provide information to those persons identified...

110 SEN. DUKES: ...not necessary in the course of the investigation...you do not give out any information...so that in the course of the investigation you may have to deliver some information...

117 JOAN VAN ALMEN: outside of the investigation process...

121 SEN. DUKES: what occurred to me, is that the investigator should not be talking to other than the interview process....

126 CHAIR SMITH:

127 SEN. DUKES: if this is not worded properly...

130 CHAIR SMITH: reads different wording...does that take care of all of those situations...

134 SEN. RASMUSSEN: yes.

135 JOAN VAN ALMEN: states wording change..

140 CHAIR SMITH: delete who is not directly...

143 JOAN VAN ALMEN: continues.

152 CHAIR SMITH: if the respondent is a senate employee...

158 kb: the senate floor staff...the personnel form is signed by you...

162 SEN. ADAMS: notice to respondent charge...if an employee the senator would also receive a copy...

174 CHAIR SMITH: yes.

176 JOAN VAN ALMEN: continues.

178 SEN. BRYANT: employer of lobbyist...that may raise possible liability...cause of action...do we have ammuny on that...

180 CHAIR SMITH: if the respondent is the lobbyist and we send a notice to the employer, copy of the report, if from the report the full committee takes up the complaint, there has been no action, employee...

200 kb: I would like to have an opportunity to do more case search...

203 SEN. BRYANT: eliminate that language now...

207 SEN. ADAMS: could that argurment be made for all other employees...

210 CHAIR SMITH: This report is going to have a conclusion at the end of ti, based on the ...I am not sure if the investigator makes that cause adn then a formal complaint is filed and the committee takes action, we disagree...

221 SEN. ADAMS: the actual liability goes to the sen. pres., not to us...

226 JOAN VAN ALMEN: 1) you may not have an obligation to the employer of the lobbyist if the complaint does not go forward, the question remains do you feel that this is information that the employer should have or want, if you give the employer notice, you can leave it up to the employer to notify you if they want a copy...

241 CHAIR SMITH: which in turns leave the liability to the employer instead of us...

244 JOAN VAN ALMEN: you are sending it only if they request it...

247 SEN. BRYANT: how does the employer...

251 SEN. ADAMS:

252 SEN. BRYANT:...

256 SEN. ADAMS: appointing authorities, not the lobbyist...nervous sending out to the employer of the lobbyist...

263 SEN. BRYANT: I would delete that position...

267 CHAIR SMITH: does the committee want to delete that position...my concern is that if the report comes back... we would want that person's employer to know how that person is behaving while in the capitol...

279 SEN. ADAMS: ...there is no option...

287 CHAIR SMITH: set this aside and come back

289 SEN. ADAMS: ...

299 CHAIR SMITH: ...definition...any questions..?

328 SEN. HAMBY: we have not defined rights...

332 JOAN VAN ALMEN: we have...

334 SEN. RASMUSSEN: ...

336 JOAN VAN ALMEN: at the end of this process nothing really happens...

354 CHAIR SMITH: this is a position of the procedure I would prefer not to adopt at this time, take it look at it and we can discuss it next week..

364 SEN. BRYANT: substantive evidence..questions sen. rasmussen...

374 SEN. RASMUSSEN: standard of evidence test...

377 SEN. BRYANT: ...

380 SEN. RASMUSSEN: it ought to be preponderance...

384 SEN. BRYANT: there is clear case law and definition on that...

390 CHAIR SMITH: you are suggesting based on the preponderance of evidence...

396 JOAN VAN ALMEN: ...you want to make it less....

Tape 5, Side B

004 SEN. BRYANT: if we are asking an investigator to take...he will draw from...otherwise he will say it could have been this or that and not draw a conclusion...

012 JOAN VAN ALMEN: one of the reasons for have the investigator to do that...one of the problems is that as a very practical everyday human dynamic factor, it is already a sensitive subject, that complaint would want some assessment as to whether they will have some resolutions...there needs to be some assistance in helping the person judge what they have either way, it would also help the committee...would not have to do and have a ...on every single fact issue if you don't want to...

030 CHAIR SMITH: let us leave it alone for a moment...formal complaint generated...

043 SEN. DUKES: yes...then the committee makes one of three recommendations...that would be the end...once the process is begun that it goes to a conclusion regardless of the conclusion...concern about beginning an investigation...

054 SEN. RASMUSSEN: it is extremely important that someone not be intimidated from the process, due to time frames, we need a way to deal with that...we are talking about the word charge in two different ways..so clarify what we are talking about...charge, verified charge, complaint... 070 CHAIR SMITH: at what point are you envisioning the complaint...

072 SEN. RASMUSSEN: two shots, here is what I say is going on, ...or they can have a verified charge...

077 CHAIR SMITH: ... informal charge, then counsel will say the situation you are describing does or does not fall within the boundaries, then the complaint...means to you, specifically does signing the verified charge initiate the investigation...that the full committee will take up the investigation...

090 SEN. RASMUSSEN: no...

092 CHAIR SMITH: before the investigation...re-describes events does that assure and guarantee that given some circumstance presented in the report that the complaint will be dealt with...

112 SEN. ADAMS: yes...it gets back to the thought that was discussed earlier...preliminary step that Rasmussen was suggesting, to ensure seriousness...

121 SEN. RASMUSSEN: that is what the investigation does...whether there is...investigator states that it is not there...

127 SEN. ADAMS: leaves respondent...mechanism that all parties receive a notice...gives example...the minute it hits this box it should go through the rest of the process...

143 JOAN VAN ALMEN: the problem is total confidentiality... gives example...

148 SEN. ADAMS: is there a formal process...

150 JOAN VAN ALMEN: if you are going to be adopting these rules with a confidentiality component and yet at the same time state that you know that ...my suggestion is that you are going to have to make a decision...then you should think about consequences for that violation

instead of what normally happens...

167 SEN. ADAMS: i agree with that...but here is the problem...we had rules that went into effect afterward....current situation to go forward...

178 SEN. DUKES: sanctions will do no good if press goes against...what else concerns me beside what sen. adams stated is sen. x is up for reelection 30 -40 days before last week of campaign, then someone decides to file a sexual harassment complaint, who knows who leaked it...continues with example...you have just killed a political career...i am very concerned about setting up a private process to destroy an individual...we have an obligation to protect both ends...you are going to have problems one way or another...you have a year after the action happens before they file a complaint...at some point they need to

227 SEN. RASMUSSEN: i am troubled that what this is going to do iss,there is already a remedy for half of this problem...there is no evidence and the complaint decides not to proceede, the fact that there is no evidence that the respondent will use...on the other side I am concerned that if we don't allow the person....

247 SEN. ADAMS: we have looked at the there is not a mechanism for the respodndent...i come to the same conclusion when we had the debate on the floor, if we are going to have this kind of procedure the claimant needs to make a committment very early on...once you start you need to take it all the way through or make a preliminary step that allows the claimant to...

260 JOAN VAN ALMEN: one of things that the rules does not get at, recognizes and deals with...adverse reations to employees,...the public forum process will screen out many of those complaints that the employee feels wronged and grived...they are not sure what the result will be...gives example...what is a hostile environment?...the courts struggle with that of course an employee is going to struggle with that...your public process is asking ...this rule presumes a pretty high level of griveance for one to access this...that leaves out a whole lot of other people...then the question is do you need another rule...

327 SEN. ADAMS: ...a preliminary box...

332 JOAN VAN ALMEN: with who?

336 SEN. ADAMS:...if we want to step back we need another preliminary step...

347 CHAIR SMITH: ...my concern is not the person who may not be serious about the complaint, the person who may be unschooled about the technical aspects of what is harassment and what is not, gives example...is this serious or not...if we lock her in the very beginning through to the end, I am afraid only the most serious cases will be heard...

394 SEN. ADAMS: what if we would provide private counsel for that person...

Tape 6, Side B 001 CHAIR SMITH: ...

003 SEN. ADAMS: ...she needs someone to talk to ...to some extent is there some type of mechanism that provides some type of counsel...

009 SEN. HAMBY: our rule does not allow it as an option...that is the resolution...more done in the investigation to work towards a resolution...it should be a request from either...

024 CHAIR SMITH: Our purpose is not to clear the name of the respondent, our purpose is allegations to be heard...it is not the purpose for the committee to provide a forum for the respondent, I am also very concerned during this investigatory process, someone working behind the scenes to make the complainant happy...some sort of determination or action...I don't think it is appropriate for it happening at this point...

177 SEN. BRYANT: this would require from your standpoint once the ...

181 SEN. ADAMS: eliminate the language...

185 SEN. BRYANT: sometimes during the investigation the complainant...

191 SEN. ADAMS: if language was put in that both parties agreed that would be alright...

196 SEN. HAMBY: it could happen in the investigative report...

202 SEN. ADAMS: the claimant cannot unilaterally stop the process...once the charge has been filed...we have to presume innocence, and we don't have a right to protect or harm the respondent, we have to work in the theoretical words we are using as well as the real world...

217 CHAIR SMITH: if we set up a process...are we setting ourselves up for a person who is harassed can make a case...that we have not fulfilled our obligation if they elect not to go through the committee process, they make the decision way back when, but the harassment actually occurred we have some liability that we are setting ourselves up for...

236 SEN. ADAMS: we did make that debate on the floor...

239 CHAIR SMITH: we have some legal requirements...

241 SEN. DUKES: the process as it is set up in the rules now, already leaves us that distinct possibility...we will not have done anything positively to move it, it appears there is another process that exists in this building...

260 CHAIR SMITH: everyone except our own staff and the standing committee staff.

264 SEN. DUKES: interim staff report to LC...I think that what you are saying is not an impossible situation...it is greatly reduced...

274 SEN. RASMUSSEN: the entire debate has changed from protecting the interest of the claimant to protecting the respondent...there ought to be an informal process...if you analogize this once you file a complaint you have to try the case..the respondent ought to have the right if they kick out of process the

ought to have the right to let that known, but not go through the process to continue...

301 CHAIR SMITH: is there some consensus in this committee at some point...

307 CHAIR SMITH: ...no...

310 SEN. ADAMS: sometime type of consultation...as an advisory sort to the claimant...

317 SEN. HAMBY: our committee is split..

320 CHAIR SMITH: at what point ...before or after the report is prepared...

326 SEN. HAMBY: cannot force.

327 SEN. BRYANT: cannot force.

331 SEN. RASMUSSEN: cannot force.

342 CHAIR SMITH: 4 believe occurs after and two who believe before...vote or leave for now...do you feel comfortable adopting these rules as we have made them up through the two pages investigative report...

360 SEN. ADAMS: no...specific language we don't provide the respondent...

365 CHAIR SMITH: we will address that on monday...if we adopt these tonight as they are...

372 SEN. RASMUSSEN: can we take out H on one, you want the verification in three...

380 JOAN VAN ALMEN: it was originally written...

383 SEN. BRYANT: when the charge ...

384 CHAIR SMITH: ...

387 SEN. RASMUSSEN: ...

390 CHAIR SMITH: in order to trigger the investigation does this need to be signed?

394 SEN. RASMUSSEN: yes.

399 hamby; next week....committee members

403 CHAIR SMITH: moves that we adopt committee rules

Tape 8 Side A

003 CHAIR SMITH: adjourns at 8:10 p.m.