

SENATE COMMITTEE ON SEXUAL HARASSMENT

April 6, 1993      Hearing Room 343 8:00 a.m.      Tapes 10 - 17

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

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

MEASURES HEARD:            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 10, SIDE A

001    CHAIR SMITH: Meeting called to order at 8:20 a.m.

002    CHAIR SMITH: Re-numbers with the committee the rules and information presented by staff.

070    JOAN VAN ALMEN, COMMITTEE COUNSEL: Reviews rules and changes.  
-Added statutory committee employees to page 1, #4 -Page 2  
confidentiality number 6 - the CONCLUSION is not

confidential

095    JOAN VAN ALMEN, COMMITTEE COUNSEL: States that if a confidential charge is considered and the charge has been made confidential, there is a

problem as to why the committee would want to put 6 in. The question is you may want to say that the filing of a charge would not be confidential nor would the result of that charge but that the contents of any investigation continue to be confidential. The suggestion is that you need to be consistent - you can't have a confidential charge filed, and supposedly nobody knows because it was going to be handled in a confidential manner, and then release the result for publication - suggests it be considered.

114    CHAIR SMITH: Suggest it be put in because it gives anyone who chooses an opportunity should the report not go forward into a full

complaint process.

109 SEN. BRYANT: Asks investigative conclusion may be stated publicly by who?

130 CHAIR SMITH: The parties - if one, both or either of the parties wish to release the conclusion, they could under this scenario.

135 SEN. BRYANT: Would add "the parties" then - that way it is clear that, for instance, we wouldn't want the committee council to have the

discretion to release the conclusion... or the members of the committee.

136 SEN. DUKES: Asks who the report goes to when it comes back.

138 CHAIR SMITH: The report goes to the respondent, the complainant, the senate president, the supervisor of the parties - if there is one - the committee council and members of the committee.

140 SEN. DUKES: Asks if the committee has an obligation to do something with a formal complaint filed.

150 CHAIR SMITH: If the conclusion is that by preponderance of evidence there is nothing to substantiate the charge, and then the charge does not go forward, you could put in that the committee formally dismisses the charge.

175 SEN. DUKES: Would like to see the committee take action in the investigation of the complaint if the report says that there is evidence that harassment occurred.

198 SEN. BRYANT: States that it would be good if we knew that a charge had been filed from the standpoint of making sure we don't become tainted by

engaging in conversation about this not knowing the charge had been filed.

200 JOAN VAN ALMEN, COMMITTEE COUNSEL: Would want to amend to state that, in changing the definition of confidential, we would add a provision

that states that the filing of the charge would not just amend the definition to be consistent with your decision that the filing of the charge would not be a confidential statement but that everything within the investigatory process would remain confidential.

235 CHAIR SMITH: The contents and facts of the charge would remain confidential, but not the fact that a charge had been filed would not. Now discuss whether the identities of the parties involved would be confidential under this.

230 SEN. BRYANT: Suggests notifying the committee members that a charge has been filed and the names of the parties involved, stop there and have

that remain confidential as far as release to the general public. Asks if committee is informed by staff council that a charge has been filed against a senator, does that make it public information.

255 SEN. ADAMS: When the Senate President is notified the committee should be notified.

285 SEN. HAMBY: Suggests having the President be the actor who receives the charge, contacts the appropriate authority to begin the investigation

and only when the president receives the results and there is evidence, then the committee kicks in.

298 CHAIR SMITH: Doesn't want that privilege granted to the President. the investigative report would come back to counsel.

300 SEN. HAMBY: States that it's just an effort to confine the information to as few as possible in recognizing confidentiality.

318 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks Senator Bryant to state his proposed changes.

320 SEN. BRYANT: The change would be that once a charge has been made that committee counsel would notify the members of the committee that a charge has been made and that notification would include the complainant and the respondent - names only.

330 CHAIR SMITH: States that the proposed language would fall under the Procedure for Filing a Charge.

335 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks if the committee agrees that it does not need to change the definition of confidentiality.

336 CHAIR SMITH: At least at this point, yes. When we get to the procedure for filing, we will look at it then. The only change on this confidentiality page is the change on #6 to add "by either party".

345 SEN. BRYANT: Asks if it should say "by complainant and respondent."

354 JOAN VAN ALMEN, COMMITTEE COUNSEL: If a complainant chooses only to be a witness to the matter, but the committee decides to prosecute anyway, does the committee then stand in the shoes of the complainant?

371 CHAIR SMITH: Asks what the legal conclusion was.

373 JOAN VAN ALMEN, COMMITTEE COUNSEL: States that it was not a conclusion - it was a discussion about the practical and problematic concern of findings yourselves possibly being in the position of prosecuting the case and at the same time adjudicating the case.

380 CHAIR SMITH: Let's talk about it when we get to that point. doesn't think we're prosecuting the case in that situation, we are just trying to bring facts out. asks which way should it be worded at the bottom of the confidentiality rule, "complainant and respondent" or

"either party".

395 SEN. HAMBY: States that it is preferable to use complainant and respondent.

402 CHAIR SMITH: The contents of the report shall remain confidential except that the investigative conclusion may be stated publicly by either the complainant or respondent.

420 SEN. RASMUSSEN: Would add "and" between the first and second set of bullets. Expresses concern that this is far broader than the original

rule. 425 CHAIR SMITH: Asks Rasmussen to clarify.

TAPE 11, SIDE A

003 SEN. RASMUSSEN: States an explicit proposition is made and it's unwelcome... does not think that meets the criteria of sexual harassment.

005 CHAIR SMITH: States that it might.

006 SEN. RASMUSSEN: States that as a committee, we want to be so broad as to encourage someone to go down a path that they might wish, in retrospect, they hadn't gone down.

012 JOAN VAN ALMEN, COMMITTEE COUNSEL: Wants to assist complainant, not act as an advocate.

032 SEN. HAMBY: Comments on types of activities involved, i.e. undressing a person with one's eyes. questions whether a one-time look at an

individual can be called sexual harassment

045 SEN. RASMUSSEN: If it said "examples of specific behaviors which may constitute sexual harassment include \_\_\_\_\_ when these types of conduct

are experienced by you as \_\_\_\_\_ (the second list), this may constitute a violation of (list rules 18.01)

066 CHAIR SMITH: Would delete "those are the" and insert "when these", so it reads "when these types of conduct are experienced by you as \_\_\_\_\_,

then sexual harassment as defined in senate rule 18.01 may have occurred, you may file.

074 SEN. RASMUSSEN: Affirms suggestion.

080 SEN. ADAMS: Would include #4 as was done on the first Statutory Committee employees.

085 CHAIR SMITH: Since this is an informational sheet, it is just "employee".

087 SEN. DUKES: Asks if an employee files a complaint not under

jurisdiction of the employees of joint committees, how do we protect them?

093 CHAIR SMITH: Asks Kathleen Beaufait, Legislative Counsel, how the Committee can go about making the decision of jurisdiction.

095 BEAUFAIT: The first decision and findings of fact would be that there is an employment relationship and that the individuals employment is constituted under either ORS or Senate Rule. That decision may cause you to have to say we don't have jurisdiction, but the complaint can be handled in the following manner. -An employee of the legislative counsel's office would refer to the

legislative counsel's personnel rules.

109 CHAIR SMITH: Only in the case of the employees being the harassers. We are only talking about the preliminary investigation process and then it's turned over to the supervisor.

115 BEAUFAIT: It is a notice of a right to file a charge under senate rules. It is not a notice to file a charge for any employee who works for the legislative assembly regardless of where.

121 CHAIR SMITH: Gives example. Asks if an employee could use this process to make the charge and could the President produce an investigative report to turn over to the head of legislative counsel?

126 BEAUFAIT: States that the point indicated is where the disciplinary authority rests.

127 CHAIR SMITH: There's no presumption that we have disciplinary authority over any employee. States rule: If the person accused is an employee, the supervisor has disciplinary authority over employees. The body does not. Asks Beaufait if we could not do this for just the investigative process.

138 BEAUFAIT: Would make the assumption that joint committees had jurisdiction over the employees of joint committees.

143 SEN. DUKES: We have an obligation to protect employees and a certain amount of responsibility for employees actions. If your employee were the harasser, we would have an obligation to do something about that individual's actions. If your employee were the victim, we would have an obligation to protect that employee. In either case it would be reasonable to go through the investigative process. If the perceived harasser is not a legislative employee, then the committee could make a recommendation to the employer.

161 CHAIR SMITH: If the employee is not a member of the body, the supervisor gets that report for the disciplinary action. we cannot discipline an employee.

171 BEAUFAIT: Should change may file a charge of harassment under this ruling. And in that argument you also need to include employees of the house.

175 CHAIR SMITH: Refers to new page 19 - committee reports.

176 SEN. DUKES: Directs question to Kathleen - if the harasser is not under our jurisdiction, how do we protect our employee if we don't go through and find out whether or not it happened and try to notify the appointing authority of that other person.

180 BEAUFAIT: States that the charge should be reported to the supervising employer to undertake action rather than undertake the investigation.

200 SEN. DUKES: Does not think we have the authority to do investigations on house members.

215 CHAIR SMITH: Suggests language change: take out statutory employees from the first page as persons against whom ... the complaint under the rule might be brought.

221 \_\_: Should one of our employees say that they have been harassed by someone who is not our employee, there should be something to make sure they were channelled in the right direction.

230 SEN. ADAMS: Asks who has a process to protect the honorary pages.

240 BEAUFAIT: No employment relationship exists in this case. Rules deal with "senate employees".

250 JOAN VAN ALMEN, COMMITTEE COUNSEL: There is no personnel recourse, but they are not without legal recourse.

300 SEN. DUKES: Asks if committee would refer victim to appropriate authority?

315 CHAIR SMITH: States potential action of the committee.

350 SEN. ADAMS: Change "report" to "charge" for consistency. -NOTICE OF RIGHT TO FILE A CHARGE not PROCEDURE -Page 3 becomes page 4, page 5 becomes 3, 4 becomes 5.

TAPE 10, SIDE B

001 CHAIR SMITH: Page number changes.

022 CHAIR SMITH: Language change - 3, D change Notice of Procedure and Rights to Notice of Right to File a Charge.

024 BEAUFAIT: Change 3, D where it says there is no requirement that the at initial charge - "at" should be taken out.

027 SEN. RASMUSSEN: Line 4 should be changed to read: upon receiving a charge which meets the requirements of subsection 1 committee counsel shall notify the president and the members of the committee on sexual harassment:

030 CHAIR SMITH: Insert the change by Senator Bryant here.

047 JOAN VAN ALMEN, COMMITTEE COUNSEL: 2, C - added that the charge would be accompanied by copy of the senate and committee rules.

054 CHAIR SMITH: Notice of Procedure and Rights is what they are getting along with the rules and the charge.

070 SEN. BRYANT: Refers to ethics commission in terms of criminal charges.

090 CHAIR SMITH: Leave complaint alone until the issue of criminal charges is finished. 105 CHAIR SMITH: Asks where the issue of criminal proceedings would fit into the complaint process.

115 SEN. DUKES: Nothing in the rule from making a decision regarding criminal proceedings during the complaint process.

117 SEN. ADAMS: US senate ethics commission has a section on violations of law - whenever the committee determines by majority vote - requiring committee to report such possible violations to proper state and federal authority. asks if we have a legal responsibility to do so.

127 CHAIR SMITH: Would be uncomfortable to make an assumption that assault has occurred.

129 SEN. ADAMS: Or possible rape.

130 JOAN VAN ALMEN, COMMITTEE COUNSEL: Getting into complex areas. The complainant will be making decision about criminal proceedings.

145 SEN. RASMUSSEN: Language changes: paragraph 3 - "shall" not "must"

167 SEN. BRYANT: Qualified investigator on page 3.5

219 SEN. RASMUSSEN: Proposes that amendments may be needed in this section.

221 SEN. BRYANT: Amendments - "must" to "shall"

235 CHAIR SMITH: Asks should anything be said in notice advising the respondent not to talk to us - complainant and respondent should not discuss this situation with anyone. Perhaps a warning that they could be compromising a members ability to render a decision.

276 BEAUFIT: Conflict of interest in terms of the vote on the floor. -Can be excused and just not be there during call.

287 CHAIR SMITH: Asks again if something should be put in the notice about warning to complainant and respondent not to talk about this.

290 SEN. DUKES: No way to keep people from talking about this.

300 CHAIR SMITH: We probably can't stop it but we could discourage it.

305 SEN. DUKES: Giving them legal advise other than the basic "how to" is not good.

307 CHAIR SMITH: We'll leave it alone then.

289 SEN. HAMBY: Asks about finding members post sine die.

340 BEAUFIT: Burden falls on the member at their address.

TAPE 11, SIDE B

013 CHAIR SMITH: INVESTIGATION OF THE CHARGE: Take out "unless a written extension of time - After 14 days, put a period, delete all after "days" in the first

line.

031 SEN. ADAMS: Asks what happens if not done in 14 days.

032 CHAIR SMITH: Will put a clause at the end of the rules that say for a good cause any of these time frames can be extended by the chair.

035 SEN. ADAMS: Paragraph 8 - change "charging employee" to "charging party".

040 CHAIR SMITH: Special rules of procedure for committee hearings.

048 SEN. DUKES: Asks why these are special rules.

050 CHAIR SMITH: Just a way to denote it as different from rules applicable in other kinds of committee hearings.

055 JOAN VAN ALMEN, COMMITTEE COUNSEL: Added a #3.

063 SEN. ADAMS: Change "who shall" to "and shall".

078 CHAIR SMITH: Complaint Procedure - does it find a preponderance of evidence and is there reason to believe a violation has occurred.

092 SEN. RASMUSSEN: Committee shall determine "whether" the criteria has been met.

105 CHAIR SMITH: If the criteria has been met, an investigative hearing will be held within 14 working days. If the criteria has not been met, the committee shall dismiss the charge.

117 CHAIR SMITH: Then within two working days of the committees finding, the counsel shall, by registered mail, notify the complainant and respondent of the outcome of the committees action and ...

135 CHAIR SMITH: Discuss changing NOTICE OF PUBLIC HEARING to NOTICE TO COMPLAINANT OF PUBLIC HEARING. No change made.

165 SEN. ADAMS: Last line of COMPLAINT PROCEDURE should be changed to say "a copy of the SPECIAL RULES OF PROCEDURE FOR COMMITTEE HEARINGS.

172 CHAIR SMITH: Acknowledges change.

175 SEN. ADAMS: Asks what happens in case of a tie vote on preponderance of evidence.

189 CHAIR SMITH: Would not challenge conclusion of investigator at this point. - Written so that there is no room for disagreement between members.



260 SEN. RASMUSSEN: Only considerations are in terms of investigation.

278 CHAIR SMITH: If report in inconclusive, the committee must decide to move forward or dismiss complaint.

330 BEAUFIT: -In a split vote, it is customary that the motion fails.

337 CHAIR SMITH: Therefore, the committee will only move forward if there is a majority vote to do so.

390 CHAIR SMITH: - If inconclusive evidence and there is a split vote, it will cause the proceedings to cease.

TAPE 12, SIDE A

002 JOAN VAN ALMEN, COMMITTEE COUNSEL: Restates language

030 SEN. DUKES: Wants inconclusive investigative report to go forward if there is preponderance that it may have happened. If there is

preponderance that it did not happen, it will be dismissed.

NOTE: Committee discusses at length the proceedings of an inconclusive investigative report. The decision made by the chair is:

1. If the accused is no longer employed, proceedings will continue under the Senate rule. 2. If there is not a preponderance of evidence, it takes three or more votes to proceed with the investigation

TAPE 13, SIDE A

066 CHAIR SMITH: 3. Committee shall determine whether the criteria has been met. If the criteria has been met, an investigative hearing shall be

held within 14 days of the committee's findings. If the criteria has not been met, the committee shall dismiss the charge.

087 BEAUFIT: Asks what about the scenario of the Claimant deciding to bow out.

089 CHAIR SMITH: The claimant cannot decide under these rules. The decision is in the hands of the committee.

090 SEN. BRYANT: If there is a preponderance of evidence in the investigation, the committee will proceed with the action despite a vote of 6-0.

098 CHAIR SMITH: If the complaint says that there is a preponderance of evidence, we don't get to vote. We go forward. 106 CHAIR SMITH: Move to the SECOND NOTICE TO THE RESPONDENT

107 SEN. ADAMS: Asks in last paragraph, why are we allowing them to personally notify the witness.

116 CHAIR SMITH: They have to notify us. We wanted to give them the opportunity if a person wished to make those arrangements with the witnesses themselves.

130 JOAN VAN ALMEN, COMMITTEE COUNSEL: We need to say something in here because these are committee rules.

132 CHAIR SMITH: Just say a list of your witnesses must be submitted, but take the personalization out of the sentence because this is a rule of the committee not a notice to a particular person.

134 JOAN VAN ALMEN, COMMITTEE COUNSEL: It was put in the notice to the person but not in the notice to the respondent. But it needs to be changed.

139 CHAIR SMITH: And that notice should be in the NOTICE OF PUBLIC HEARING.

145 SEN. ADAMS: Suggest that, under RIGHT TO CALL WITNESSES where it says within five days prior to the day of hearing you will receive a list of witnesses which the committee expects to call at the hearing, can somebody suffice us by not having to comply with that five days.

154 CHAIR SMITH: Understood that the members of the committee would want to have as much information as it can all the way through this rather than having surprise witnesses, since we are the ones making the decision about whether or not to go forward that we begin to collect this information.

159 SEN. ADAMS: If we are going to allow them to personally notify the witness of date and time, then it should also state that has to be done in enough time to allow us to have five days prior notice of the hearing of the list of witnesses.

164 JOAN VAN ALMEN, COMMITTEE COUNSEL: There's no requirement in here that they submit a list.

165 SEN. ADAMS: Yes. And then all of a sudden they're up there that day, yet if I go to the next page...

167 JOAN VAN ALMEN, COMMITTEE COUNSEL: This is going to be changed to reflect the requirement of witness submission.

168 SEN. DUKES: Asks if they want to subpoena someone, they may give us the list, does that mean that we are then going to subpoena those witnesses for them.

173 CHAIR SMITH: Yes. They don't have the authority to do that.

184 CHAIR SMITH: Calls for a recess until 5:00 p.m.

187 CHAIR SMITH: Resumes meeting at 5:34 p.m.

200 JOAN VAN ALMEN, COMMITTEE COUNSEL: Presents revised rules with changes - calls attention to COMPLAINT PROCEDURE asks if the language is okay.

231 SEN. ADAMS: Asks, on 2-A what happens if a claimant has changed positions since the time when an alleged incident occurred.

240 CHAIR SMITH: The claimant would no longer be in the position the claimant was in when the incident occurred.

260 CHAIR SMITH: Amends language to read, "the respondent is within the scope of the rule..."

280 CHAIR SMITH: Counsel must determine initially when the charge occurs that the complainant and the respondent fit within the scope of the rule.

290 SEN. RASMUSSEN: There still has to be a provision that the jurisdiction or requirements have been met by the complainant.

293 CHAIR SMITH: At the time the incident occurred.

294 SEN. RASMUSSEN: Yes. We can't just lose the complainant.

298 CHAIR SMITH: We have to determine that we still have some jurisdictional power over these people. The only ones that we have authority over in the committee's process are seated senators and working lobbyists.

307 SEN. RASMUSSEN: This isn't the place to do that. We have to go back to the jurisdiction and say that regardless of where the complainant is at the time the process is going on, he/she is still covered by the rules. Both parties have to be subject to the rule when the process starts and the investigation needs to confirm that was true at the time.

314 SEN. ADAMS: 18.02 section 4 subsection b - there should be a document available from counsel that had been sent to the senate president that would indicate at the time of the alleged incident that all of the parties were within the scope of the rule.

345 CHAIR SMITH: It is not possible to take action against a member who no longer is a member.

352 SEN. DUKES: It is not clear where it has us go back and see where the respondent was. If the respondent is no longer under our jurisdiction it is not something we would have picked up along the way. The way the rules are written, couldn't find anything that said we could stop. Suggested something in there to make sure we still have some jurisdiction or don't go forward into a hearing on it.

374 SEN. RASMUSSEN: Suggest language: 2-A would read that the parties were persons within the scope of the rule at the time the complaint was initiated, and 2-C would read that the respondent continues to be a person within the scope of the rule.

386 CHAIR SMITH: Actually in 2-A it would be that the parties were within the scope of the rule at the time of the alleged incident.

390 SEN. RASMUSSEN: That's exactly right.

TAPE 12, SIDE B

022 CHAIR SMITH: Asks what is here now for the criteria for consideration.

023 SEN. RASMUSSEN: A. that the parties were persons within the scope of the rule at the time of the alleged incident(s), B. the conclusion stated in the investigative report, and C. that the respondent continues to be within the scope of the rule.

034 CHAIR SMITH: Asks does 3 say what we agreed that it should say.

036 SEN. BRYANT: Clarification on 3-b, would it be better to say four or more - asks what if at the time you convene there is only five members present, then three would be the majority.

040 JOAN VAN ALMEN, COMMITTEE COUNSEL: Under the committee rule that you are operating on you have to have a quorum, quorum is four, in your initial rules that you adopted.

043 CHAIR SMITH: But for this process we need all six.

044 SEN. BRYANT: So if we said "four or more" we would have the protection we were concerned about, rather than "the majority".

051 SEN. BRYANT: Asks what if there was a report with three charges and the investigator finds that two are not substantiated and one is and then the committee decides to go ahead on the one count. The concern is we need to notify somehow the respondent that...

055 CHAIR SMITH: We have not made the decision to eliminate counts that the investigator doesn't...

056 SEN. BRYANT: At some point we would have to though. The charge initially would say if things happened at different times, they would be identified. This is similar to either a criminal matter or civil matter and those are actions that have taken place and each one stands on their own.

062 CHAIR SMITH: But they may be taken together for the conclusion. Each one will stand on it's own in terms of substantiating it, but they will be taken in concert when a determination is made of whether or not this violated the rule by creating a hostile environment or doing whatever portion of the rule we decide it does. 068 SEN. BRYANT: Asks what if one was a improper comment, the second was an alleged touching, and the investigation comes back that there is preponderance of the evidence that the improper comment took place but a week later there is no evidence that the touching took place. What is the respondent required to respond to at that point.

078 JOAN VAN ALMEN, COMMITTEE COUNSEL:

1. the allegations that are made, there is a set of facts. The respondent, at that point responds or answers those factual allegations. The complainant will have to determine which portion or portions of the rule the facts violated. you are going to be looking at a set of facts and it may be few or many that will combine to create the violation of i.e. a hostile environment, i.e. a quid pro quo, i.e. those kinds of rule violations set out.

2. the findings of fact... you need a trained investigator... one isolated act may or may not, depending on the gravity of the act, constitute a violation of your rule.

121 CHAIR SMITH: If we chose to move forward, the charge should be

moved forward in its entirety. We can chose at the end of our process... we decide our own findings of fact, not just what the investigator says. At that point we can chose not to put in some allegations in our findings of fact. The concern is about throwing something out before we've heard it. If we are going to hear any of it we should hear all of it.

194 CHAIR SMITH: There will not be a report that has a conclusion for each allegation. There will be a set of findings and one conclusion based upon those findings.

219 JOAN VAN ALMEN, COMMITTEE COUNSEL: The investigator will be making determinations of credibility in a context. That is the importance of looking at the situation as a whole.

229 CHAIR SMITH: Asks if it needs to be talked about more.

242 SEN. BRYANT: Willing to proceed with what we have now.

264 SEN. DUKES: Filling out statement, expand testimony later?

273 CHAIR SMITH: Does not want to limit it to getting it all down with the initial filling out of the statement.

279 JOAN VAN ALMEN, COMMITTEE COUNSEL: Nothing would preclude a complaint filing an independent charge based on a new set of facts.

286 SEN. BRYANT: That may have to be done.

291 CHAIR SMITH: Done with this page.

293 SEN. DUKES: Second notice to respondent..paragraph 1,2,3,4, seems to be redundant...

306 CHAIR SMITH: 18.02.08, is a requirement of what is to be in the notice. 311 SEN. DUKES: The notice of the procedures and rights is a form, and re-saying this seems to be redundant.

317 CHAIR SMITH: Your recommendation is to change the last sentence.

321 JOAN VAN ALMEN, COMMITTEE COUNSEL: The rule should define the notice rather than the notice defining the rule.

329 SEN. DUKES: Asks if the notice is part of the rule.

332 CHAIR SMITH: Yes. There would have to be a majority vote of the committee in order to change the notice.

334 CHAIR SMITH: Eliminate the last sentence on that second notice.

340 SEN. ADAMS: Asks if the charge and complaint are the same document.

362 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks if a new complaint document should be drafted and who will sign the complaint.

382 CHAIR SMITH: Asks what new information are we giving the respondent.

386 JOAN VAN ALMEN, COMMITTEE COUNSEL: Maybe none, states example.

398 SEN. DUKES: Asks if when the committee chose to move forward into a hearing, we would also make the determination as to what we were moving forward on and then would that become the complaint?

431 CHAIR SMITH: Right.

431 SEN. DUKES: That makes sense.

433 SEN. ADAMS: That could be done within the complaint procedure portion where counsel is directed to prepare a complaint and the complaint shall include ....

442 CHAIR SMITH: Between 4 and 5 probably in the complaint procedure. After we have made our determination.

443 SEN. ADAMS: Right.

444 BEAUFAIT: And before convening.

445 CHAIR SMITH: And before we get into the notice of requirements.

Tape 13, Side B

012 SEN. BRYANT: There could be changes from the investigator. The respondent is entitled to the exact charges. 020 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks if you sign off at that point or do you ask the complainant..

026 CHAIR SMITH: Since this is an action of the committee it seems appropriate that the chair would sign.

031 SEN. RASMUSSEN: Doesn't like this part of the rule.

033 CHAIR SMITH: Asks if someone give us some words in developing this complaint.

040 SEN. DUKES: We should adopt a complaint as a formal action before we go forward.

046 CHAIR SMITH: Asks for further comments. We have a set of allegations, a charge, a set of findings and a report. What we are interested in is

the findings so we are going to create a document that is going to list the allegations.

054 JOAN VAN ALMEN, COMMITTEE COUNSEL: Yes. Not sure how BOLI crates the basis of the complaint.

060 CHAIR SMITH: We are not alleging them we are reporting them.

062 SEN. ADAMS: We are investigating them.

064 CHAIR SMITH: Asks if the initial charge were not adequate, due to additional charges, could the counsel supplement the initial charge with any new allegations that were made and answered.

072 SEN. BRYANT: We would have to provide a process to do that. Asks how could we do that if we do not know what the charges are. Asks

if the

charges are handled as a second complaint, which is more costly.

080 CHAIR SMITH: The complainant would have to be on paper both times.

083 SEN. BRYANT: There needs to be a penalty for false allegations.

087 CHAIR SMITH: They would be sworn in committee.

090 SEN. BRYANT: Asks if it never made it to committee, do to false allegations. The charge was not made under sworn circumstances. It

would be just one paragraph added at the bottom saying I sign this charge...

098 JOAN VAN ALMEN, COMMITTEE COUNSEL: This is a very public process, creates distance between one bringing the charges, if more layers are

added.

114 SEN. BRYANT: On false swearing, you have to prove an intentional deception by your word against someone else.

124 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks why have it at all.

125 CHAIR SMITH: If the swearing is at the very beginning, may not be the complete charge, it should occur later in the proceedings. If you swear at the beginning and more facts are found, what happens to the first

statement. Do we want to put something in that causes a criminal action against one filing the complaint when the ...

142 JOAN VAN ALMEN, COMMITTEE COUNSEL: The complainant may not at the outset be represented by counsel at the beginning of the charge, which

puts committee counsel to go through facts without the liability that an attorney would.

160 SEN. BRYANT: 162.054 definition of false swearing. This is a serious matter and they should be willing to swear to the facts that are stated as true.

176 CHAIR SMITH: We indicate under the Witness Privilege portion we speak to this issue. Those statements are clear regarding false statements

presented before this committee.

194 SEN. BRYANT: I am concerned about the situation before it is brought before the committee.

202 CHAIR SMITH: That person may be sued.

206 JOAN VAN ALMEN, COMMITTEE COUNSEL: Asks if you are going to give the investigator the responsibility to determine what is false and not

false.

235 SEN. BRYANT: The rejection of one set of facts is not a false statement. That is up to the District Attorney to prove that it is a

false swearing charge. This is a serious enough matter that to begin the process it should be a sworn process. 257 SEN. HAMBY: On page 6, asks is that where you want it to go. asks if Committee counsel can get a signature?

264 SEN. BRYANT: I would prefer Page 3, section 1-h.

276 SEN. ADAMS: Washington's procedure, if at the end of page six put a statement of notification if the charge is ...would not make them

subject to criminal prosecution but on notice.

290 JOAN VAN ALMEN, COMMITTEE COUNSEL: Based on practical experience, this should be put on a low priority, it is not something that happens all

the time, to put it in first priority.

312 SEN. RASMUSSEN: The language is in the statute is verified complaint, I agree with counsel.

330 CHAIR SMITH: By the nature of this process, the testimony of the complainant before this panel will scare a lot of people away.

356 SEN. BRYANT: Those who really want to go through this process will not be afraid of signing a sworn statement.

265 SEN. DUKES: If the language is "to the best of my knowledge this is true and correct". Counsel's concerns are not in a political process.

390 CHAIR SMITH: Does not bring about perjury.

397 SEN. BRYANT: False swearing is a misdemeanor, perjury is a felony.

427 CHAIR SMITH: It's still a criminal offense.

428 SEN. DUKES: But only if a DA chooses to move forward with it and it would have to be pretty serious.

Tape 14, Side A

006 SEN. DUKES: It does add the element of saying "this is serious. You can go either way.

009 SEN. RASMUSSEN: I move that we do not include the language to verify signature.



012 SEN. ADAMS: If we can find light enough language for Senator Bryant's, I concur.

071 CHAIR SMITH: Can someone give us some language to react to?

020 SEN. DUKES: Complaint Procedure, asks what is a complaint.

026 CHAIR SMITH: Kathleen is looking up some things with regard to this so let's come back to that. I believe we are at the Respondent's Second

Notice of Procedure and Rights.

043 SEN. RASMUSSEN: Why not make it a verified complaint. Actually that's not my preference, but it seems to me that' what everyone's talking about doing.

CHAIR SMITH: We kind of left that behind long enough for Ms. Beaufait to do some thinking and studying and we are going to come back to.

SEN. RASMUSSEN: Points out that we've been talking about this in a fabricated way and we're not any more.

053 JOAN VAN ALMEN, COMMITTEE COUNSEL: I have made changes consistent with the committee wanting "shall(s)" under Right to Counsel and Right to

Call Witnesses for clarity sake.

066 SEN. ADAMS: Asks if it is necessary under Notice of Possible Sanction to refer back to Senate Rules on what the sanctions are.

070 CHAIR SMITH: We give them a copy of Senate rules twice.

073 SEN. ADAMS: Asks if we have to, in this notice, specifically refer to a very specific senate rule.

078 JOAN VAN ALMEN, COMMITTEE COUNSEL: You don't have to mention it.

080 SEN. BRYANT: Right to Call Witness, second paragraph does not make sense. Asks if our position will be to submit the list and we call the

witnesses in that order, and what if they want to add witnesses less than five working days prior to the hearing. There is possibility of rebuttal witnesses if more testimony. In putting in the sentence it is more a suggestion than an order. You are not trying to imply that they cannot call because they are not on the list.

098 CHAIR SMITH: We are not trying to imply that.

100 SEN. BRYANT: If I were the respondent and received the notice, I would attempt to take the deposition of the complaining witness for several

reasons.

103 CHAIR SMITH: When the rules were written, deposition was discussed. My intent was to give committee as much power as possible and, since it

isn't a judicial process, my feeling was that depositions have no place here.

120 SEN. BRYANT: The concern is in regards to due process; knowing in advance what the accuser would say.

130 BEAUFAIT: The first concern is the oath. You would have a problem with the deposition being unsworn. The other thing is the subpoena says to

appear before the committee. The due process level here is not the due process level of the criminal case.

150 SEN. BRYANT: Asks if they have a right to subpoena the investigative records.

154 CHAIR SMITH: They have a copy of the records in the report submitted to them.

161 CHAIR SMITH: Next page Witness Attendance.

164 SEN. ADAMS: On Respondent's Second Notice of Procedure and Rights, paragraph 3, we changed the name to Special Rules of Procedure for

Committee Hearings.

176 CHAIR SMITH: Witness Attendance.

178 SEN. ADAMS: First paragraph, second sentence. Asks if they have to provide them with a list of the documents also.

184 CHAIR SMITH: Yes.

185 SEN. BRYANT: The subpoena would indicate what the documents are.

193 SEN. ADAMS: Under A, there is two ORS 171.515; we just need to eliminate the one.

CHAIR SMITH: Yes. And ORS 171.522; the last ones. They were listed as reference points.

200 SEN. ADAMS: ORS 171.510 requires a majority vote of the committee to compel witnesses to testify or produce material. So it's going to take a 4-2 vote.

203 BEAUFAIT: The reason I suggested the Senate of the President to issue the subpoena is so that the committee would not have to call a meeting

to issue the subpoena. 213 SEN. DUKES: Asks if we have a budget.

215 CHAIR SMITH: Not yet.

216 SEN. DUKES: Asks how are we going to do the reimbursement under D.

219 BEAUFIT: It is not a large some. It's not an expert witness fee.

226 SEN. DUKES: I just wondered where the money is coming from.

229 SEN. ADAMS: Asks if a paper reporter can take notes if the recording device is prohibited.

230 CHAIR SMITH: No. Paper reporting is alright.

238 SEN. HAMBY: Asks if we are talking about our microphones.

242 CHAIR SMITH: No. We can say the media coverage shall be denied by covering lenses and turning off the microphones and that will be more

specific.

250 SEN. DUKES: Question regarding court reporters, if used are we using the transcription process that is used now. We should clarify it more

regarding what they will be subject to.

277 CHAIR SMITH: The certified court reporter will be used for a precise record more than for protection.

285 JOAN VAN ALMEN, COMMITTEE COUNSEL: The respondent has the right to a due process, therefore, a court reporter would be used.

295 SEN. DUKES: Concern regarding tapes. It takes almost no time to get a complete copy of these tapes.

299 CHAIR SMITH: If there is a certified court reporter, there is no reasons that the microphones would need to be on.

300 SEN. DUKES: Not sure what the senate rules or the public meetings law or something else requires.

301 BEAUFIT: Public meeting law requires minutes; if the recorder is more accurate then turn your tape off.

311 CHAIR SMITH: Any other questions.

314 SEN. HAMBY: Concern regarding newspaper coverage; the print media.

319 CHAIR SMITH: If you read the whole sentence, it says 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 other methods is occurring. Your right. That's not what our intent is here.

Perhaps we should take out by other methods. 337 SEN. BRYANT: Caution regarding timing for the hearing from once the charge is mailed to the respondent; the intent to have hearing within

fourteen working days will not be practical for several reasons. 1. You cannot tell the attorney when the hearing will be.

361 CHAIR SMITH: Correct. You can look at this rule though and pretty closely guess when the first public hearing will begin.

363 SEN. BRYANT: But that counsel may not be available within that time frame.

372 CHAIR SMITH: The concern is we are hear for six months on a good year and if we try to put time frames in this process to accommodate

someone's private counsel, we are not going to be able to do this process at all.

386 SEN. BRYANT: You would be able to do it, but it would not be done on the time line that's outlined here.

392 CHAIR SMITH: Asks what do you suggest as an alternative.

393 SEN. BRYANT: Gives example of BOLI.

400 CHAIR SMITH: Right. But BOLI sometimes takes two or three years to resolve a case. We have got a very short period of time.

420 SEN. BRYANT: You could probably do it. Because the hearing is going to take place in the evening. You would be able to have the hearing within 60 days.

425 CHAIR SMITH: That's still running up on four months from the beginning to the end.

Tape 15, Side A

002 JOAN VAN ALMEN, COMMITTEE COUNSEL: One problem is a practical matter. If you make an exception for one attorney where will you draw the line?

015 SEN. BRYANT: Any good attorney will be busy. We are talking about a trial attorney, a specialist in this area. To allow the Respondent to

have some due process, there will have to be some accommodation.

027 SEN. RASMUSSEN: I agree with Sen. Bryant.

030 CHAIR SMITH: Somebody needs to tell me how the senate, while it's in session, can take a complaint in March and get it done before the

adjournment.

032 SEN. RASMUSSEN: You can make it tighter than 60 days. It's still a problem, but you can make it 30. The other thing is you don't

allow one lawyer to come in one day and another lawyer to come in the next. If

you have lawyers you tell them to go talk about it first and get back to us with a date.

034 CHAIR SMITH: I don't want to give this process to the attorneys for the parties. I don't think that's necessary. Maybe 14 days is too tight,

but 60 is certainly too long.

041 SEN. DUKES: Why not thirty, with a consideration of a Saturday hearing.

043 CHAIR SMITH: We can set our hearings whenever we want to, but again we will probably get attorneys who say they don't work at night.

044 SEN. BRYANT: That is not a reasonable excuse. Suggesting the flexibility of working nights and weekends. You have to allow them, even in scheduling it on the weekends or in the evenings, enough time to adequately prepare for the case. Because they literally have to fit this in, in order to do it.

050 CHAIR SMITH: Asks why. Does it say that under the law?

051 SEN. BRYANT: I think under the due process argument it would.

053 SEN. DUKES: We are going to put some little provision at the end of this that says for good cause time lines can be waved. The respondent

would be most anxious to get this disposed of as soon as possible, and not hang on to this for an extended period of time.

063 BEAUFIT: The due process answer would be that time was not given for proper preparation for defense. What the length of time is Sen. Dukes

comment is correct.

074 CHAIR SMITH: I think thirty days is to long.

079 SEN. DUKES: Can we say not more than thirty days?

085 CHAIR SMITH: Is that what you want?

087 SEN. BRYANT: Is 30 days defendable under due process?

088 CHAIR SMITH: Yes.

088 BEAUFIT: If the time frame is going to get attacked, it will regardless.

100 CHAIR SMITH: Within thirty days?

102 SEN. BRYANT: You will have to have the clause in the end.

104 CHAIR SMITH: It is listed.

110 CHAIR SMITH: We are finished with Witness Attendance. Witness Lists.

114 JOAN VAN ALMEN, COMMITTEE COUNSEL: Not sure what your position is about requiring lists to be submitted by the parties.

118 CHAIR SMITH: The parties will submit witness lists to the committee within five days. 125 SEN. RASMUSSEN: Witness List, Line 1, should be shall, not may.

131 CHAIR SMITH: It is permissive to submit that list for subpoena. If they have witnesses that they don't feel need to be subpoenaed, they

don't have to do that.

132 SEN. RASMUSSEN: Right. But what if they do it five days prior, are they then entitled. Because this rule doesn't require that they must do it, it just say they may do it seven days...

133 CHAIR SMITH: It should say shall submit to committee counsel names addresses of persons..

143 SEN. RASMUSSEN: To be subpoenaed by the committee.

145 CHAIR SMITH: Do you want to say if any, because then that leaves open that you're not mandating that they do it.

147 SEN. RASMUSSEN: Yes.

148 CHAIR SMITH: Persons and documents, if any...

149 SEN. RASMUSSEN: To be subpoenaed on the parties behalf by the committee.

154 CHAIR SMITH: Order of Evidence, Order of Testimony; any questions on that page?

162 SEN. BRYANT: Order of Evidence, there will be a right to make a closing argument to the committee.

170 CHAIR SMITH: Why?

172 SEN. BRYANT: Its part of the due process.

174 CHAIR SMITH: It is not necessary as part of this process.

176 BEAUFIT: That is a procedure that has been adopted by the courts, I don't think it is indicated here. It is useful in summarizing in a

different kind of setting. It might be useful, but not necessarily a due process.

187 SEN. RASMUSSEN: It might also safer. Because it does fulfill a due process requirement and therefor if we omit it we may subject ourselves to a challenge for having not allowed it.

195 CHAIR SMITH: Not sure its a due process requirement in the courts, but we might want it in there. Do you want a closing argument listed?

198 SEN. DUKES: Not interested in someone who is practicing law making persuasive arguments.

202 JOAN VAN ALMEN, COMMITTEE COUNSEL: You are assuming everyone will have a lawyer. Not everyone will.

213 SEN. BRYANT: I don't think a complainant will have trouble finding an attorney.

217 JOAN VAN ALMEN, COMMITTEE COUNSEL: I disagree

218 CHAIR SMITH: I disagree.

219 JOAN VAN ALMEN, COMMITTEE COUNSEL: The lawyers will be more willing for the respondent than the complainant.

232 SEN. RASMUSSEN: A lawyer will be more damaged during the proceeding than in the summarization. I disagree with the counsel, this setting is different.

251 CHAIR SMITH: Where does the committee stand?

260 SEN. ADAMS: I prefer a closing argument.

262 CHAIR SMITH: I don't think it has a place here, but we will have closing arguments. What is the process? Would you add that Ms. Van

Almen? After the rebuttals, the closing arguments. Do we have to allow them to say what they want in any way they want in your opinion?

284 SEN. RASMUSSEN: There is no requirement that we cannot control the argument.

290 CHAIR SMITH: Anything else? Scope of Evidence.

293 SEN. ADAMS: Earlier today there was a discussion on the addition of another paragraph about evident of a complainant. Is this what we were

shooting at, this print?

300 SEN. BRYANT: I have information regarding the language around the current rape shield law which limits when evidence of someone's past

sexual behavior is admissible. What this basically say is that you look to the probative value of the evidence.

316 CHAIR SMITH: If this evidence of past sexual behavior is evidence of any other alleged behavior other than a possible relationship between

the respondent and the complainant, I consider to be irrelevant to this issue. The complainant's sexual behavior is not relevant to a sexual

harassment case, unless the behavior has something to do with the respondent.

334 JOAN VAN ALMEN, COMMITTEE COUNSEL: Courts have said that it is not enough just to talk about some remote or unconnected sexual contact with some unrelated and unconnected person. You have to show...it is the

bias as it relates to the respondent, not just a bias that you might tend to file false complaints or false accusations. The showing has to direct you back to the respondent.

341 SEN. BRYANT: The best explanation of it is, it has to be relevant and have probative value in establishing a rebutting of the material fact

and it cites evidentiary code 412. The safer way to go is to be bound by the evidentiary code as interpreted.

347 CHAIR SMITH: Why? For the purposes of our rule, why can't we say what is specifically regarding?

355 SEN. BRYANT: It is a factual determination based on the charge in front of you. Whether or no the evidence is probative to a material fact. If

you deny the evidence based upon a written rule or written stone then you would be violating that due process argument.

367 CHAIR SMITH: This is not a criminal proceeding.

370 JOAN VAN ALMEN, COMMITTEE COUNSEL: There is no confrontation issue here so it eliminates the strength. One of the reasons for exceptions has to do with the sixth amendment right that the criminally accused has to

confrontation. You don't have that here because it is not a criminal proceeding.

397 CHAIR SMITH: You can tie it to the behaviors connected to the respondent.

Tape 14, Side B

001 SEN. DUKES: A defense might be that the complaint's behavior encouraged, that may or may not be biased or motive. I am not

interested in going back one year, much less more than that. What is opinion evidence?

024 JOAN VAN ALMEN, COMMITTEE COUNSEL: Opinion evidence is when a



witness comes in and says, in my opinion this occurred.

029 CHAIR SMITH: The statements speak to that issue.

036 SEN. DUKES: I am interested in a shorter time motive.

040 CHAIR SMITH: Is there a clear way to state this?

042 SEN. BRYANT: Evidence of a complainants past sexual behavior shall not be admitted unless it is relevant and have probative value in

establishing or rebutting a material issue.

046 CHAIR SMITH: That is still to vague, it does not clearly say, evidence of the claimants past sexual behavior would not be allowed unless your

talking about sexual behavior that involves the respondent.

054 SEN. BRYANT: Then it would have probative value.

056 CHAIR SMITH: Yes. But something else might have probative value also, or someone could argue that another experience that this complainant has had could have probative value.

058 SEN. BRYANT: So you would have that read, evidence of a complainant's past sexual behavior shall not be admitted unless it involved the

respondent.

060 CHAIR SMITH: That's what I would like to see.

060 SEN DUKES: Do you have a definition of past sexual behavior, how far past is past?

062 JOAN VAN ALMEN: You need to understand that this is in the context of construing it in a criminal law context. It cites State vs. Wattenberger, 1989; past sexual conduct includes acts committed subsequent to the charged incident but before trial. Another would be, Court of Appeals defined the victims past sexual behavior as a volitional non-volitional physical act that the victim has performed for the purpose of the sexual stimulation or gratification of either the victim or another person or an act that is sexual intercourse or sexual contact or an attempt to engage in such an act between the victim and another person.

073 CHAIR SMITH: I don't know if there is a definition in the statues.

077 JOAN VAN ALMEN, COMMITTEE COUNSEL: states another definition.

079 SEN. BRYANT: You can't put a date on it, due to the relationship of the parties.

083 SEN. DUKES: Is it unreasonable to write a rule that says that it is not admissible to use sexual behavior unless it is in the recent past and

directly related to the respondent.

085 SEN. RASMUSSEN: I don't like the timing requirement. The chair's response is appropriate.

100 CHAIR SMITH: You are suggesting that evidence of a complainants past sexual behavior other than reputation or opinion evidence is also not

admissible unless such evidence relates to past sexual behavior involving the respondent.

SEN. RASMUSSEN: I took out other than reputation or opinion evidence because that says the opposite of what you mean it to there.

109 SEN. BRYANT: I don't see the need to be that restrictive.

116 SEN. ADAMS: Right to Representation. Who are future parties?

134 CHAIR SMITH: Not all conversations, only private conversations. Delete the word future. It should read, parties shall refrain from private

discussions touching upon the complaint or facts thereto.

143 JOAN VAN ALMEN, COMMITTEE COUNSEL: If you want that all the way through, put in the front of the rules.

164 CHAIR SMITH: Did you add language that we, the committee, could not discuss this?

171 JOAN VAN ALMEN, COMMITTEE COUNSEL: No.

173 SEN. ADAMS: Notice of Public Hearing, you are told not to contact committee members on any matter.

182 CHAIR SMITH: That is for the complainant.

186 SEN. HAMBY: What about under the complaint procedure early on, maybe right after the chair convening the committee?

189 SEN. RASMUSSEN: parties shall refrain from private discussions touching upon the complaints or the facts related thereto with any member of the senate until the senate acts...

199 SEN. ADAMS: Put it in the complaint procedure.

202 SEN. HAMBY: There is no mention of confidentiality in the complaint procedure.

207 SEN. RASMUSSEN: Move the language over to confidentiality.

210 CHAIR SMITH: Then we can delete the language in under the Right of Representation. We also need to say that the members of the committee

may not discuss this.

215 SEN. HAMBY: Something because even if we were to dismiss a charge...

216 SEN. RASMUSSEN: Parties and members of the senate shall refrain...

217 SEN. ADAMS: How do we handle the debate on the floor?

220 SEN. RASMUSSEN: This is in regards to private discussions. So we could have a committee discussion, a debate on the floor and a public

discussion.

223 SEN. ADAMS: Once a complaint is public notice no member can talk to another member regarding the charge.

239 CHAIR SMITH: Since we have it in the Confidentiality Rule, we don't need it in the Notice of ... Any more questions?

246 SEN. ADAMS: The last paragraph and sentence; reference to letter from Beaufait page 2, paragraph 4, second sentence; do the words "determine

it is necessary" create a problem for us?

264 CHAIR SMITH: What we were anticipating is that if the complaint is not willing to come forward to make the charges, the committee could ask

those questions.

270 BEAUFAIT: It is an option not a requirement.

275 SEN. BRYANT: Council will be allowed to cross examine?

277 CHAIR SMITH: Yes.

280 SEN. DUKES: Do we want a sound recording of the procedure, or a court reporter only?

289 CHAIR SMITH: We do want a court reporter.

292 SEN. DUKES: It might be good for legislative intent, if it is ever necessary do determine what we are trying to accomplish by not allowing media coverage if requested, and if it is done to avoid publicity that

comes from being broadcast. I would submit that for us to make a tape recording of that, unless we somehow were able to keep that from the press, that we have then just said you can't do it but we will provide with the tape to use on your investigative report.

309 CHAIR SMITH: There is no reason for the microphones to be on if we have a court reporter.

317 SEN. DUKES: Microphones are alright for amplification within this

room but not for broadcasting throughout the building.

320 CHAIR SMITH: Someone give me some words to put this into the rules.

328 BEAUFIT: The proceedings shall not be available for the closed circuit system of the capital.

340 SEN. DUKES: If we tape record the hearing can we protect it? Is it part of public records?

347 BEAUFIT: The tape of the hearing will not be made available until after verification for accuracy by the court reporting transcript.

356 CHAIR SMITH: Let us not have tape recording.

360 SEN. HAMBY: I agree.

362 CHAIR SMITH: Asks Beaufait about the proceedings and how they will be recorded.

364 BEAUFIT: The proceedings shall not be taped by the committee recording system and shall not be broadcast by the capitol closed circuit system.

389 SEN. DUKES: Legislative media may be able to adjust these microphones to only amplify within the hearing room.

Tape 15, Side B

001 SEN. ADAMS: The committee comes to two conclusions. One whether or not there has been a violation and then if there has been a violation, what the sanction should be.

009 CHAIR SMITH: The committee has to determine the findings of fact, then it does make a conclusion based upon those findings, and then from that conclusion will make a recommendation.

015 SEN. ADAMS: Would that also require a majority vote of the committee to adopt findings of fact?

020 CHAIR SMITH: There would include a majority vote on all of these points. If there is absent a majority vote on any of these facts a

minority report could be filed. Counsel will prepare a proposed findings of fact so that we have a basis from which to start.

036 SEN. DUKES: Members of the senate are not allowed to have private discussions on this issue prior to an action. If we vote on any part of this... 043 CHAIR SMITH: Any members who have filed a minority report may have private discussions regarding the matter.

050 SEN. RASMUSSEN: Why limit it to the minority?

051 CHAIR SMITH: The rest of the committee has already made a conclusion. Within seven days of the completion of the transcript the committee

comes together, discusses the proposed findings presented by the council and votes. At that point if a minority of members disagree they will want to come together to discuss... I don't see a need for the majority to come together.

070 SEN. DUKES: They should state which points their minority report will be in regards to.

080 CHAIR SMITH: It is important when you serve notice that you speak to points.

084 SEN. HAMBY: We have an option at this point in the plan to prepare language that would allow or encourage committee members to discuss

among themselves...

085 CHAIR SMITH: My concern is that this is a public process.

088 SEN. BRYANT: It is only public to the extent that you have a quorum. Other than the special rule we are adopting, otherwise the standing

committee... any two of us could discuss it and not be in violation of our rules.

102 SEN. RASMUSSEN: Add to language submitted earlier under the confidentiality rule, except for members who have served notice of a

possible minority report may consult with each other regarding that report.

125 JOAN VAN ALMEN: Reads language; parties and members of the senate shall refrain from private discussions touching upon the charges (or complaints) or the facts related thereto with any member of the senate until such time as the senate acts, except that members of the committee who have served notice of a possible minority report may consult with each other.

131 SEN. ADAMS: That would allow us to talk to the press, or any anybody but another member of the senate.

137 CHAIR SMITH: Delete with any member of the senate.

142 SEN. ADAMS: It will require every member of the committee and senate to say "I cannot comment on that issue" to the press.

149 CHAIR SMITH: We cannot bind everyone with this rule.

152 BEAUFAIT: That has to be an understanding, you can bind your members but not everyone else.

163 CHAIR SMITH: It should say parties and members of the committee shall refrain. We need to find a way to discuss these rules with our

colleagues. 180 SEN. ADAMS: Does "parties" include the president of the senate?

183 CHAIR SMITH: No. We are talking about the complainant and respondent.

202 SEN. DUKES: Does this restrict the respondent from talking to the press?

212 CHAIR SMITH: There is no sanction for violating the confidentiality rules.

216 SEN. DUKES: The respondent will want to say something.

222 SEN. RASMUSSEN: Take "parties" out.

225 SEN. BRYANT: Can you stop the parties from talking to other members of the senate.

230 SEN. DUKES: You can stop the parties from discussing this with other members of the senate. You want to stop committee members from talking

to the media and the parties about it.

234 CHAIR SMITH: I would like this as tight as we can make it so that we don't open ourselves to a statement regarding being biased because we

have been discussing this. I am trying to keep it as clean as possible.

256 SEN. DUKES: We have no sanctions, we ought to encourage our colleagues not to be talking about it in public, but how do you restrict their

speech. I would like to think about it...

269 SEN. ADAMS: If we include the claimant and respondent recognizing there are no sanctions, but recognizing we want to go through a tight process, if there were a case now, is there anything that we are adopting that

might prejudice that case in the confidentiality rules if the case was not confidential?

280 BEAUFAIT: Questions the events that transpired before the adoption of the rules.

287 SEN. ADAMS: We have not done anything in the way of confidentiality that might prejudice any case that could come before this committee.

290 BEAUFAIT: No.

292 CHAIR SMITH: We can adopt the rules tonight and take care of the language tomorrow. If it needs to be changed we can come back.

307 SEN. ADAMS: On footnote, second sentence; Unsure of the meaning.

312 CHAIR SMITH: If there is a majority report saying a violation is found and a minority report saying no violation and the senate adopts the

minority report then there is nothing to act on in terms of sanctions.

316 SEN. ADAMS: Asks does the conclusion have to be based on findings of fact.

325 CHAIR SMITH: Yes. 327 SEN. ADAMS: Asks what happens if there is a conclusion regarding a violation of the senate rule but there is a minority report adopted by

the senate that changes the findings of fact.

329 BEAUFAIT: The majority says...The minority says...you cannot change.

336 CHAIR SMITH: If you dispute the findings of fact then your conclusion is bound to be different. Then you would have to have a different

conclusion in your minority report.

341 SEN. ADAMS: Asks were there not three separate reports.

346 CHAIR SMITH: One report, three separate sections; findings, conclusion and recommended action.

364 SEN. BRYANT: In the BOLI proceedings, if you file a complaint BOLI process it, but if you file a private civil law suit BOLI dismisses it.

376 CHAIR SMITH: The purpose of this committee is to determine if sexual harassment occurred and if it did to determine appropriate sanctions

against the harasser, not remedy for the victim.

388 SEN. BRYANT: Asks what we do if criminal charges are pending.

393 CHAIR SMITH: We do need to add language regarding criminal process.

Tape 16, Side A

003 SEN. DUKES: No photographs, etc., is that only at the request of the witness?

009 CHAIR SMITH: Yes.

010 SEN. DUKES: Would like to have the ability to stop some of that, a little bit of lee way.

014 SEN. RASMUSSEN: Include a rule that says the chair should have the discretion to ensure that the decorum of the proceedings are maintained.

016 BEAUFAIT: It is already stated.

021 SEN. DUKES: Maybe we can expand on that language.

024 CHAIR SMITH: That language is under witness attendants, what is the language you want.

035 BEAUFAIT: If the rules stated that the chair may maintain order.

041 SEN. DUKES: If it is appropriate to expand, fine. If not, add another footnote that gives the chair the authority to handle any other

disruptions or disorder.

052 CHAIR SMITH: At the bottom of Witness Attendance it says the chair can punish a breach of order by anyone in attendance by censure and

exclusion from the hearing.

054 SEN. DUKES: I would rather that it was under the general policy of the committee not witness attendants.

058 CHAIR SMITH: We will adopt it conceptually.

060 SEN. ADAMS: Language regarding Sen. Bryant's language regarding signatures. If a charge is filed under the rules that we have adopted

it is not proper for anyone to discuss whether or not there have been charges. I just want to make sure that the charge proceedings are confidential.

074 CHAIR SMITH: Is that what the committee wants. The conclusion of the investigative report is not confidential. Doesn't see any reason why

the fact that a charge has been filed needs to be confidential.

078 BEAUFAIT: It does not refer to the charge being filed.

080 SEN. ADAMS: It says the charge and answer documents shall be confidential.

087 CHAIR SMITH: A charge has been filed; confidential - yes or no.

094 SEN. DUKES: It would be nice to keep it confidential as long as possible. Although the reality is when a respondent has been charged,

there is no way you can stop them from talking about it.

097 CHAIR SMITH: The question is has a charged been filed. As long as everyone is precluded from discussing the facts or the allegations

themselves, or the parties...

102 SEN. DUKES: We can restrict ourselves as committee members, once



it is filed, the council knows about it, the president knows about it, we are notified of it.

112 CHAIR SMITH: And investigators floating around the building asking questions.

114 SEN. DUKES: But the investigator better not be talking about it.

116 CHAIR SMITH: No. But the people that are being talked to likely are going to be talking.

117 SEN. DUKES: It would be appropriate that if there is disclosure that a charge has been filed that it not come from the legislative committee or the legislature. If it comes from someone who was interviewed or the respondent we have no control over that, but we should not be out there publicizing it.

120 CHAIR SMITH: Asks if the language is satisfactory as it is.

123 SEN. DUKES: I was including staff.

140 CHAIR SMITH: Asks if the fact that a charge has been filed should be confidential.

142 SEN. DUKES: Doesn't think it makes any difference. 155 SEN. BRYANT: So if somebody comes up to me I can say yes a charge has been filed.

157 BEAUFAIT: Asks then are you going to tell them who it was and every thing else.

162 SEN. RASMUSSEN: Thinks it ought to be confidential.

167 CHAIR SMITH: We are going to leave it confidential. If the complainant chooses to say something, fine. But the conclusion of the investigative report is not confidential.

171 CHAIR SMITH: One other point that needs to be made. Sen. Bryant's language with regard to a signed complaint.

173 SEN. BRYANT: I, \_\_\_\_\_, do hereby verify that the above statements are true to the best of my knowledge and  
acknowledge BEAUFAIT: States that the charge should be reported to the supervising employer to undertake action rather than undertake the investigation.

200 SEN. DUKES: Does not think we have the authority to do investigations on house members.

215 CHAIR SMITH: Suggests language change: take out statutory employees from the first page as persons against whom ... the complaint under the rule might be brought.

221 \_\_: Should one of our employees say that they have been harassed by someone who is not our employee, there should be something to make sure they were channelled in the right direction.

230 SEN. ADAMS: Asks who has a process to protect the honorary pages.

240 BEAUFAIT: No employment relationship exists in this case. Rules deal with "senate employees".

250 JOAN VAN ALMEN, COMMITTEE COUNSEL: There is no personnel recourse, but they are not without legal recourse.

300 SEN. DUKES: Asks if committee would refer victim to appropriate authority?

315 CHAIR SMITH: States potential action of the committee.

350 SEN. ADAMS: Change "report" to "charge" for consistency. -NOTICE OF RIGHT TO FILE A CHARGE not PROCEDURE -Page 3 becomes page 4, page 5 becomes 3, 4 becomes 5.

TAPE 10, SIDE B

001 CHAIR SMITH: Page number changes.

022 CHAIR SMITH: Language change - 3, D change Notice of Procedure and Rights to Notice of Right to File a Charge.

024 BEAUFAIT: Change 3, D where it says there is no requirement that the at initial charge - "at" should be taken out.

027 SEN. RASMUSSEN: Line 4 should be changed to read: upon receiving a charge which meets the requirements of subsection 1 committee counsel shall notify the president and the members of the committee on sexual harassment:

030 CHAIR SMITH: Insert the change by Senator Bryant here.

047 JOAN VAN ALMEN, COMMITTEE COUNSEL: 2, C - added that the charge would be accompanied by copy of the senate and committee rules.

054 CHAIR SMITH: Notice of Procedure and Rights is what they are getting along with the rules and the charge.

070 SEN. BRYANT: Refers to ethics commission in terms of criminal charges.

090 CHAIR SMITH: Leave complaint alone until the issue of criminal charges is finished. 105 CHAIR SMITH: Asks where the issue of criminal proceedings would fit into the complaint process.

115 SEN. DUKES: Nothing in the rule from making a decision regarding criminal proceedings during the complaint process.

117 SEN. ADAMS: US senate ethics commission has a section on violations of law - whenever the committee determines by majority vote - requiring committee to report such possible violations to proper state and federal authority. asks if we have a legal responsibility to do so.

127 CHAIR SMITH: Would be uncomfortable to make an assumption that assault has occurred.

129 SEN. ADAMS: Or possible rape.

130 JOAN VAN ALMEN, COMMITTEE COUNSEL: Getting into complex areas.

The complainant will be making decision about criminal proceedings.

145 SEN. RASMUSSEN: Language changes: paragraph 3 - "shall" not "must"

167 SEN. BRYANT: Qualified investigator on page 3.5

219 SEN. RASMUSSEN: Proposes that amendments may be needed in this section.

221 SEN. BRYANT: Amendments - "must" to "shall"

235 CHAIR SMITH: Asks should anything be said in notice advising the respondent not to talk to us - complainant and respondent should not discuss this situation with anyone. Perhaps a warning that they could be compromising a members ability to render a decision.

276 BEAUFAIT: Conflict of interest in terms of the vote on the floor. -Can be excused and just not be there during call.

287 CHAIR SMITH: Asks again if something should be put in the notice about warning to complainant and respondent not to talk about this.

290 SEN. DUKES: No way to keep people from talking about this.

300 CHAIR SMITH: We probably can't stop it but we could discourage it.

305 SEN. DUKES: Giving them legal advise other than the basic "how to" is not good.

307 CHAIR SMITH: We'll leave it alone then.

289 SEN. HAMBY: Asks about finding members post sine die.

340 BEAUFAIT: Burden falls on the member at their address.

TAPE 11, SIDE B

013 CHAIR SMITH: INVESTIGATION OF THE CHARGE: Take out "unless a written extension of time - After 14 days, put a period, delete all after "days" in the first

line.

031 SEN. ADAMS: Asks what happens if not done in 14 days.

032 CHAIR SMITH: Will put a clause at the end of the rules that say for a good cause any of these time frames can be extended by the chair.

035 SEN. ADAMS: Paragraph 8 - change "charging employee" to "charging party".

040 CHAIR SMITH: Special rules of procedure for committee hearings.

048 SEN. DUKES: Asks why these are special rules.

050 CHAIR SMITH: Just a way to denote it as different from rules

applicable in other kinds of committee hearings.

055 JOAN VAN ALMEN, COMMITTEE COUNSEL: Added a #3.

063 SEN. ADAMS: Change "who shall" to "and shall".

078 CHAIR SMITH: Complaint Procedure - does it find a preponderance of evidence and is there reason to believe a violation has occurred.

092 SEN. RASMUSSEN: Committee shall determine "whether" the criteria has been met.

105 CHAIR SMITH: If the criteria has been met, an investigative hearing will be held within 14 working days. If the criteria has not been met, the committee shall dismiss the charge.

117 CHAIR SMITH: Then within two working days of the committees finding, the counsel shall, by registered mail, notify the complainant and respondent of the outcome of the committees action and ...

135 CHAIR SMITH: Discuss changing NOTICE OF PUBLIC HEARING to NOTICE TO COMPLAINANT OF PUBLIC HEARING. No change made.

165 SEN. ADAMS: Last line of COMPLAINT PROCEDURE should be changed to say "a copy of the SPECIAL RULES OF PROCEDURE FOR COMMITTEE HEARINGS."

172 CHAIR SMITH: Acknowledges change.

175 SEN. ADAMS: Asks what happens in case of a tie vote on preponderance of evidence.

189 CHAIR SMITH: Would not challenge conclusion of investigator at this point. - Written so that there is no room for disagreement between members.

260 SEN. RASMUSSEN: Only considerations are in terms of investigation.

278 CHAIR SMITH: If report is inconclusive, the committee must decide to move forward or dismiss complaint.

330 BEAUFAIT: -In a split vote, it is customary that the motion fails.

337 CHAIR SMITH: Therefore, the committee will only move forward if there is a majority vote to do so.

390 CHAIR SMITH: - If inconclusive evidence and there is a split vote, it will cause the proceedings to cease.

TAPE 12, SIDE A

002 JOAN VAN ALMEN, COMMITTEE COUNSEL: Restates language

030 SEN. DUKES: Wants inconclusive investigative report to go forward if there is preponderance that it may have happened. If there is

preponderance that it did not happen, it will be dismissed.

NOTE: Committee discusses at length the proceedings of an inconclusive investigative report. The decision made by the chair is:

1. If the accused is no longer employed, proceedings will continue under the Senate rule. 2. If there is not a preponderance of evidence, it takes three or more votes to proceed with the investigation

TAPE 13, SIDE A

066 CHAIR SMITH: 3. Committee shall determine whether the criteria has been met. If the criteria has been met, an investigative hearing shall be

held within 14 days of the committee's findings. If the criteria has not been met, the committee shall dismiss the charge.

087 BEAUFAIT: Asks what about the scenario of the Claimant deciding to bow out.

089 CHAIR SMITH: The claimant cannot decide under these rules. The decision is in the hands of the committee.

090 SEN. BRYANT: If there is a preponderance of evidence in the investigation, the committee will proceed with the action despite a vote of 6-0.

098 CHAIR SMITH: If the complaint says that there is a preponderance of evidence, we don't get to vote. We go forward. 106 CHAIR SMITH: Move to the SECOND NOTICE TO THE RESPONDENT

107 SEN. ADAMS: Asks in last paragraph, why are we allowing them to personally notify the witness.

116 CHAIR SMITH: They have to notify us. We wanted to give them the opportunity if a person wished to make those arrangements with the witnesses themselves.

130 JOAN VAN ALMEN, COMMITTEE COUNSEL: We need to say something in here because these are committee rules.

132 CHAIR SMITH: Just say a list of your witnesses must be submitted, but take the personalization out of the sentence because this is a rule of the committee not a notice to a particular person.

134 JOAN VAN ALMEN, COMMITTEE COUNSEL: It was put in the notice to the person but not in the notice to the respondent. But it needs to be changed.

139 CHAIR SMITH: And that notice should be in the NOTICE OF PUBLIC HEARING.

145 SEN. ADAMS: Suggest that, under RIGHT TO CALL WITNESSES where it says within five days prior to the day of hearing you will receive a list of witnesses which the committee expects to call at the hearing, can somebody suffice us by not having to comply with that five days.

154 CHAIR SMITH: Understood that the members of the committee would want to have as much information as it can all the way through this rather than having surprise witnesses, since we are the ones making the decision about whether or not to go forward that we begin to collect this information.

159 SEN. ADAMS: If we are going to allow them to personally notify the witness of date and time, then it should also state that has to be done in enough time to allow us to have five days prior notice of the hearing of the list of witnesses.

164 JOAN VAN ALMEN, COMMITTEE COUNSEL: There's no requirement in here that they submit a list.

165 SEN. ADAMS: Yes. And then all of a sudden they're up there that day, yet if I go to the next page...

167 JOAN VAN ALMEN, COMMITTEE COUNSEL: This is going to be changed to reflect the requirement of witness submission.

168 SEN. DUKES: Asks if they want to subpoena someone, they may give us the list, does that mean that we are then going to subpoena those witnesses for them.

173 CHAIR SMITH: Yes. They don't have the authority to do that.

184 CHAIR SMITH: Calls for a recess until 5:00 p.m.

187 CHAIR SMITH: Resumes meeting at 5:34 p.m.

200 JOAN VAN ALMEN, COMMITTEE COUNSEL: Presents revised rules with changes - calls attention to COMPLAINT PROCEDURE asks if the language is okay.

231 SEN. ADAMS: Asks, on 2-A what happens if a claimant has changed positions since the time when an alleged incident occurred.

240 CHAIR SMITH: The claimant would no longer be in the position the claimant was in when the incident occurred.

260 CHAIR SMITH: Amends language to read, "the respondent is within the scope of the rule..."

280 CHAIR SMITH: Counsel must determine initially when the charge occurs that the complainant and the respondent fit within the scope of the rule.

290 SEN. RASMUSSEN: There still has to be a provision that the jurisdiction or requirements have been met by the complainant.

293 CHAIR SMITH: At the time the incident occurred.

294 SEN. RASMUSSEN: Yes. We can't just lose the complainant.

298 CHAIR SMITH: We have to determine that we still have some jurisdictional power over these people. The only ones that we have authority over in the committee's process are seated senators and working lobbyists.

307 SEN. RASMUSSEN: This isn't the place to do that. We have to go back to the jurisdiction and say that regardless of where the complainant is at the time the process is going on, he/she is still covered by the rules. Both parties have to be subject to the rule when the process starts and the investigation needs to confirm that was true at the time.

314 SEN. ADAMS: 18.02 section 4 subsection b - there should be a document available from counsel that had been sent to the senate president that would indicate at the time of the alleged incident that all of the parties were within the scope of the rule.

345 CHAIR SMITH: It is not possible to take action against a member who no longer is a member.

352 SEN. DUKES: It is not clear where it has us go back and see where the respondent was. If the respondent is no longer under our jurisdiction it is not something we would have picked up along the way. The way the rules are written, couldn't find anything that said we could stop. Suggested something in there to make sure we still have some jurisdiction or don't go forward into a hearing on it.

374 SEN. RASMUSSEN: Suggest language: 2-A would read that the parties were persons within the scope of the rule at the time the complaint was initiated, and 2-C would read that the respondent continues to be a person within the scope of the rule.

386 CHAIR SMITH: Actually in 2-A it would be that the parties were within the scope of the rule at the time of the alleged incident.

390 SEN. RASMUSSEN: That's exactly right.

TAPE 12, SIDE B

022 CHAIR SMITH: Asks what is here now for the criteria for consideration.

023 SEN. RASMUSSEN: A. that the parties were persons within the scope of the rule at the time of the alleged incident(s), B. the conclusion stated in the investigative report, and C. that the respondent conti

CHAIR SMITH: The motion CARRIES.

140 CHAIR SMITH: Adjourns meeting at 9:15 p.m.