PROFESSOR RONALD GRONSKY:
Chair, Berkeley Division of the Academic Senate

Re: R&E Statement on Conducting Senate Business Electronically

Dear Chair Gronsky,

During the 2003-04 academic year, the Committee on Rules and Elections (R&E) considered your request that R&E propose legislation to allow the Division and its agencies to conduct business electronically (e.g., by e-mail or web-based functions). R&E considered this question thoughtfully and reviewed legislation from other Divisions, deliberated the impact of the California Public Records Act and privacy law on Senate records, and considered the impact on the quality of discussions to better understand the consequences of conducting business electronically before responding.

During R&E’s discussions, the committee noted that electronic voting is relatively straightforward, dependent upon adequate security, maintaining confidentiality, and ensuring that all Senate members have the means to cast their votes (e.g., either a computer with the appropriate software or paper ballots). Electronic discussions are a more complicated issue. R&E wrote the attached statement to help guide committees who wish to conduct some of their business electronically. If you think that it will be helpful, please distribute it to them. If you or incoming chair Robert Knapp wish to discuss this matter with R&E, please let me know.

R&E stands ready to propose legislation in the fall 2004 semester if you wish, but it seemed best to address the more complicated aspect of conducting business electronically first. Please let me know if you would like R&E to draft legislation that would allow the Berkeley Division to conduct its business electronically.

Sincerely,

William Oldham
Chair, Committee on Rules and Elections
Statement by the Committee on Rules and Elections
on Conducting Senate Business Electronically
August 6, 2004

Senate committees have come to rely increasingly on electronic mail to informally discuss current business, to distribute the minutes, agenda, and call to a meeting, and to conduct ballots. Strictly speaking, much of this practice--particularly the conduct of debate and votes by electronic means--is inconsistent with our current Bylaws and is likely, if challenged, to cause decisions taken to be declared null and void. There is activity at both Divisional and Statewide levels to legitimize the use of electronic mail for conducting business. We can draw, for example, on legislation enacted at UCLA and San Diego for possible language to deal with distribution of information (calls to meetings and agenda) and with elections.

However, we think that there is a set of issues that has gone largely unaddressed--those having to do with the actual conduct of meetings other than voting. A "meeting" conducted by electronic mail differs in certain essential, qualitative ways from a traditional in-person meeting. Without some care, these differences can become detrimental. We are concerned particularly about questions of participation and confidentiality.

The Committee on Rules and Elections (R&E) has considered these issues and recognizes that despite the inconsistency with our Bylaws, some committees are conducting some of their business electronically. Considering the issues and attempting to capture the spirit of Robert’s Rules of Order, especially in the area of electronic discussion and voting, R&E recommends that the following interim guidelines be followed.

Interim Recommendations

1. Committees that intend to conduct business electronically must provide a mechanism whereby a reasonably sized minority of participants can force a face-to-face meeting on selected issues. In general, committees must provide reasonable accommodation for members who have difficulties using electronic media.

2. Certain voting practices are inappropriate to electronic meetings, where technical problems may temporarily but silently exclude some participants. Any votes on substantive matters should require explicit Yea/Nay/Abstain responses from participants; silence should not be construed as consent.

3. It would be helpful to prepare a short, standard "electronic facts of life" document for the benefit of faculty and staff serving on committees, apprising them of the communication and confidentiality issues described here.

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1 We are not addressing here meetings conducted in real time, (telepresence), in which what participants say or type is immediately available to the rest. These are essentially ordinary meetings conducted by other means.

2 Some may argue that a "reasonably sized minority" consists of a single person, but this assumes that face-to-face meetings are the "deliberative gold standard". As discussed later, e-mail does have certain advantages, to the extent that others might even argue that they are disadvantaged by face-to-face meetings.
4. To partially address the problem of individuals being inadvertently excluded from discussions, committees that conduct business electronically should provide archived mailing lists that both distribute mail from one participant to the rest and archive discussions for a limited period. The campus should consider developing a facility for this purpose that has well-defined retention policies and that is designed to minimize the proliferation of copies of transient material produced during deliberation.

5. Certain topics, personnel matters in particular, should not be discussed in electronic mail.

DISCUSSION

Participation

Participants in traditional meetings know to whom they are talking, and can be reasonably certain that at least those who choose to will hear all of the discussion and be able to respond as they see fit. One purpose of Robert's Rules of Order is to insure precisely this—that all participants' views are heard. To some extent, a meeting-by-email actually facilitates discussion, because it is typically conducted over a much longer period of time than a traditional meeting and allows participants to consider and draft their responses both carefully and simultaneously (one does not have to wait one's turn to send e-mail, while one does have to wait to speak). Furthermore, there is no need to discuss items of business in sequence. Hence, electronic meetings can largely dispense with rules that are intended to facilitate orderly sequential conduct of business within severely limited time frames.

On the other hand, electronic mail has its disadvantages. Most find that drafting replies by electronic mail is considerably more laborious than simple oral response. Many are put off by the impersonal distance imposed by electronic mail, the lack of immediacy, and find the pace of interaction too slow to suit their own methods of collective deliberation. Furthermore, we should expect electronic mail to be plagued by occasional glitches for some time to come. Some common problems involve human error: responding only to the person sending a message, and not to the rest of the committee or leaving off an address. These two mistakes in particular can easily go undetected, so that intended participants in a discussion are cut out of essential portions of it. Consider, for example, what happens when a committee chair, following what is perfectly good practice in a face-to-face meeting, sends e-mail saying "If I hear no objection to proposal X, I will go ahead and act on it" and it is not received.

Confidentiality

In the academic setting, most minutes of meetings and the results of votes are intended to become public. However, other parts of traditional meetings are not. The particulars of discussions—what arguments were made and who made them—are generally not available for public scrutiny. Participants often rely on this fact to speak freely. If a meeting's recording secretary tapes the discussion for the purpose of preparing minutes, these tapes can be erased. In the case of electronically conducted discussion, the lifetime of the detailed discussion is much more problematic. Of course, most people by now are familiar with the problem of electronic theft of documents, conducted over the Internet. That problem, one hopes, will eventually recede as the Internet becomes "socialized" and software manufacturers become more serious about
electronic security. However, another problem will persist. In well-administered systems, electronic mail, like other data files, is routinely backed up: copies are archived so that they can be restored in case of damage or accidental deletion. Indeed, computer file systems typically do not actually erase data when given the command to do so, but rather throw it figuratively into a "recycling area", to be erased and re-used only when needed. As a result, entire verbatim electronic discussions may be available in principle for long periods of time. While we may expect to be able to prevent unauthorized access to these records, they may still be revealed, as the precise contents of traditional meetings may not, in response to a subpoena. In short, it is not clear that it will ever be possible to keep electronic discussions as confidential as traditional meetings.

Under the California Public Records Act, any member of the public may request to see any records kept or produced by meetings about public business. However, this right of access does not necessarily extend to such things as draft documents, or generally to documents that have finite lifetimes by design and are then routinely destroyed. This exception may protect the detailed e-mail deliberations as well. The operative word here is "may"; apparently, the interpretation of the law is currently unclear in this area.

There are certain possible precautions that we might establish as recommended practice. For example, the campus could maintain a dedicated server whose purpose is to serve as a repository for Senate-committee-related documents that are intended to be transient (such as e-mail discussions conducted in lieu of meetings). These servers would deliberately not be backed up and their documents would be routinely purged. They could make their contents available through secure private web sites, and it is feasible to mark pages retrieved from them in such a way that individual committee members' viewing software does not keep hidden ("cached") copies of the material without the user's knowledge. Such practice, if properly codified and adhered to, would at least establish that the documents containing discussions (as opposed to products) are intended to be transient, and are destroyed as a matter of standard practice. This said, we would have to weigh the cost of developing and maintaining such a setup and the necessary discipline to use it against the expected cost of releasing the details of committee deliberations (likely to be rather low for the bulk of committee business).

In closing, we look forward to the Divisional Council directing the Berkeley Division toward adoption of rules governing electronic business.