



**Minutes of the Meeting of the Faculty Senate
Special Session on Sanctuary Status
University of Notre Dame
17 January 2017
136 DeBartolo Hall**

Attendees: Matthew Capdevielle, Dominic Chaloner, Annie Coleman, Tarek Dika, Mary Frandsen, Ben Heller, Michael Hemler, Daniel Hopkinson, Daniel Johnson, Paul McGinn, Richard Pierce, Sylwia Ptasinska, Ben Radcliff, Jeanne Romero-Severson, Phillip Sloan, Marsha Stevenson, David Thomas, Meng Wang, Hannelore Weber, Xiaoshan Yang, Samir Younes, Guangjian Zhang

Excused: John Gaski, Nasir Ghiaseddin

Absent: Matt Bloom, Chuck Dittbenner, Bridgette Drummond, David Galvin, John Gaski, Nasir Ghiaseddin, Randy Kozel, Beyerlein Kraig, Howard Lanser, Byung-Joo Lee, Hai Lin, Chao-Shin Liu, Adam Martin, Natalie Porter, Anna Simon, Aaron Striegel, Joe Urbany, Shauna Williams

Guests: Marianne Corr, Vice President and General Counsel; Jason Ruiz, Associate Professor of American Studies; Leo Guardado, Graduate Student, Kroc Institute for International Peace Studies

1. Senate chair Jeanne Romero-Severson (JRS) opened the meeting with a word of prayer. She then announced that the purpose of the meeting was to consider the Faculty Senate Resolution on Sanctuary for Undocumented Students, and asked for confirmation of the presence of a quorum of voting members. She then asked the chair of the Administrative Affairs Committee, Dan Johnson, to make a report.
2. Prof. Johnson gave a brief history of the development of the resolution, which included a meeting of the committee in which the members heard presentations from Prof. Jason Ruiz (JR) and Ph. D. student Leo Guardado (LG). He indicated that the committee had invited participation from other senators. The committee met on January 9 to finalize the draft, and then circulated it among members (some of whom who could not be present at that meeting) for more suggestions and minor edits, after which the draft resolution was adopted by the subcommittee. He also summarized the philosophical considerations that went into drafting the resolution, which included the desire to draft something that did not differ radically from what the University administration had already articulated, to avoid language that encouraged breaking the law and going against legal practices; something positive and consistent in tone. He then invited guests JR and LG to address the Senate.

JR: In 2013, Fr. Jenkins announced that ND would admit and fully support undocumented students, in accordance with the “Deferred Action for Childhood Arrivals” (DACA) policy established by President Obama in June 2012. He explained that the “Dream Act” works in conjunction with DACA – if a student attended an American high school, s/he can attend an American college or university as an American citizen and receive financial aid. A sanctuary movement began in the second half of 2016, due to concerns about the possible election victory of Donald Trump, who had indicated that he wanted to end DACA immediately. After the election, there were organized efforts around the

country to declare colleges and universities “sanctuary campuses.” A petition that looks much like the Senate resolution, and that urged Fr. Jenkins to declare Notre Dame a sanctuary campus, gathered over 4700 signatures in 24 hours and was delivered to Fr. Jenkins as part of a sit-in at the Main Building. JR compared this with efforts at other institutions. Fr. Jenkins is very sympathetic to the issue; Ruiz had also heard (but not been able to verify) that Fr. Jenkins is enacting some of the policies recommended by the petition. JR stressed that the movement to declare ND a sanctuary campus needs pressure from multiple constituencies – students, faculty, etc.

LG, who is writing a dissertation on sanctuary, said that the word “sanctuary” speaks to who we are, and is a Christian term that has been in use for 2,000 years in the Judeo-Christian tradition. In the 1980s, another sanctuary movement developed in which U. S. churches gave refuge to Central Americans who were being persecuted. Guardado came from El Salvador in 1991 (at age 9), before the war ended, and crossed the border illegally. Swarthmore College gave him a full scholarship as an undocumented student. Sanctuary status tells undocumented students and those thinking of attending a university that the university will protect them and give them refuge. Deportation is a real thing to undocumented students –it forces them to return to dangerous places and situations. LG encouraged the Senate to take a public stance. JRS added that ND has about 50 such students; the University of California system has over 5,000. The absence of DACA will lead to a serious crisis – the situation is very dire. Access to places like Notre Dame will be seriously restricted if DACA is rescinded.

Prof. Johnson then moved that the Faculty Senate take up the motion (the resolution on sanctuary) that was before it; the motion was seconded by Ben Radcliff.

3. JRS then invited University Counsel Marianne Corr (MC) to speak. MC pointed out that the word “sanctuary” creates a challenge and a legal issue, and pointed out that some universities (e.g., Harvard) have felt that they could not adopt the term, as it has no legal definition; it may give students a false and misleading assurance, as a university cannot be what a church is regarding sanctuary. She then suggested some wording changes (given below in bold) in the four sanctuary provisions included in the resolution (note: the provisions are not numbered in the resolution; they have been numbered here for ease of reference):

1. The university affirms unequivocally that undocumented students are full members of the Notre Dame family who will be protected to the fullest extent ~~possible by our legal services of the law.~~

2. The University of Notre Dame will not allow Immigration and Customs Enforcement (ICE) / Customs and Border Protection (CBP) / U.S. Citizenship and Immigration Services (USCIS) to be present on the university campus **for enforcement purposes** unless required by a warrant.

3. The University of Notre Dame will not share information about undocumented students with these agencies unless required by subpoena, ~~or~~ court order, **or warrant**.

4. The University of Notre Dame will continue to admit, **to the full extent of the law**, undocumented students and provide supplementary financial aid for them in the event that DACA is terminated or curtailed and if undocumented students lose the right to work.

MC indicated that she had no legal opinion on the final provision (on creating an office for undocumented students). She also encouraged the Senate to weigh whether the use of the word “sanctuary” is misleading and over-promising.

Discussion:

One member asked MC to comment more on no. 4, specifically whether it committed the University to defy the law; he indicated that many *emeriti* (whom he had surveyed) had mentioned this as a concern. MC did not see this as defying the law. Another member asked about the amount of information gathered from students by the University, such as with regard to financial aid, and wondered about the disclosure of this information, especially given that these students will have no Social Security number. MC: the University does not share this information; only aggregate information is reported. Indeed, one example was given where the University was asked to share information and ignored the request. Moreover, DACA students need to share specific information with the federal government in order to get that status. Another member asked what to do about research programs in which all participants must be citizens according to the terms of the grant? In other words, by knowing that they can participate in a particular program, one is aware of their status – what are the legal implications if one fails to disclose this information, for example if one is receiving federal funding? MC: Must ask the students, and must certify the validity of their status, but currently there are no ramifications if this is not done – one can gather information without asking the specific question. MC added a “tangent point”: that with grants, the institution is required to certify that we are not in violation of any law. The use of term “sanctuary” is not well defined legally and thus its use may bring scrutiny and indicate we are breaking the law. It may be a “flag” on grant applications. Worth thinking about. A member asked whether there is another term or phrase that might be used in place of “sanctuary”; MC was not sure. Another member asked whether it was the view of MC that none of the five provisions of the resolution are in violation of federal law. MC: yes, none violate the law, but could benefit from some tweaking for clarity. Another member asked whether there are any provisions here that Fr. Jenkins has not already put in place. MC: perhaps the office for undocumented students. JR added that federal law will change shortly, and that perhaps the Senate should recommend to Fr. Jenkins that he not abide by the law, and not comply with a change in federal policy that will place a group of students, who are part of the Notre Dame family, in a difficult situation. Perhaps the Senate should recommend that Fr. Jenkins not comply with an unjust system, and not suspend existing policies. The resolution becomes meaningless if the Senate does not recommend that Fr. Jenkins resist federal policies. Another member added that we are not recommending that Fr. Jenkins return to other policies – these are the provisions that we can stand behind, and represent how we understand “sanctuary” in this environment. The word “sanctuary” means something to people; what we mean is these five provisions. Even without DACA the provisions will not be against the law. We may personally feel resistance to federal order is important but these provisions are not saying this.

4. JRS then opened the floor to members to offer amendments, after reminding faculty that the process should be orderly.

Anne Coleman then moved that we amend the specific language in the first four provisions in accordance with MC’s recommendations.

JRS indicated that Roberts Rules dictate that the Senate must address each of these suggested changes separately.

Provision no. 1

Phil Sloan moved that the proposed change to provision no. 1 be adopted; seconded by Richard Pierce.

Discussion: one member stated that the change was an obvious improvement. Another questioned

whether “of the law” was not already understood in the original provision, and felt that the reference to university resources carried more force. Another felt that adding “of the law” was important, as it went to the heart of the provision – protecting the students. Another felt that the Senate should make the boldest, most robust statement possible, and not alter the language here. Others suggesting combining both clauses. (Here JRS indicated that the Senate must first deal with the current motion.) MC added clarification: legal ethics prevent the Counsel’s office from taking students on as clients, as the University is its client. She added that legal resources could be brought to campus for these students. Another member pointed out that the law will soon change, and felt that if our principal concern was to protect students when the law changes, that we should state this specifically; otherwise this was not a serious document. Another pointed out that too many faculty feel that potential illegality and compliance with federal law is crucial in whether they could support the resolution. Another questioned whether the resolution was prescriptive or a response to something actual, and that we should not presume something might happen that was stated in campaign rhetoric. Another member pointed out that Bob Mundy of Admissions had told her (in a telephone conversation) that most of our undocumented students came in under DACA, but not all (some were too old, for example), and that the University is already supporting non-DACA undocumented students, and that this will continue to be the case.

JRS then called for a vote on the proposed change to provision no. 1:
In favor of the amendment: 16; Opposed: 5; Abstentions: 0; the motion was carried.

Provision no. 2

Annie Coleman moved that provision no. 2 be amended to read as proposed (see above); seconded by Dan Hopkinson.

Discussion: one member asked about the meaning of “enforcement,” and felt that this aspect was already covered in provision no. 3.

JRS then called for a vote on the proposed change to provision no. 2:
In favor of the amendment: 20; Opposed: 0; Abstentions: 1; the motion was carried.

Provision no. 3

Annie Coleman the moved that provision no. 3 be amended to read as proposed (see above); seconded by Dan Hopkinson.

Discussion: one member felt that the provision should be amended to read “... unless required by law.” JRS indicated that the Senate would have to entertain a separate motion on this change. Another member spoke in favor of the change, and said that it indicates that we are going to stand our ground. Another said that s/he was not sure that “law” could not mean more than indicated here (such as a presidential regulation). MC added that such a regulation must still have a triggering mechanism (e.g., “show me the warrant”) – it must have language that triggers her to respond. In other words, it is not enough for someone to demand that something is demanded by the law; one needs a third party, an independent arbiter to decide that the petitioner has the right to petition under the law. A member asked MC whether she suggested the addition of the phrase “or warrant” to give the petition more strength, and MC responded in the affirmative.

JRS then called for a vote on the proposed change to provision no. 3:
In favor of the amendment: 20; Opposed: 0; Abstentions: 1; the motion carried.

Provision no. 4

Phil Sloan moved that provision no. 4 be amended to read as proposed (see above); seconded by Paul McGinn.

Discussion: one member pointed out that without DACA, undocumented students would be considered international students. Another member then raised questions about undocumented graduate students, and whether they would have to apply for an I-9 visa if working in a research project; he also wondered how the government views having undocumented students with fellowships and free tuition (i. e., not working). He added that with respect to provision no. 4, one might have undocumented students who are not covered under DACA, and wondered if the provision should say “any undocumented student.” Another member agreed with the spirit of the proposed change, but felt the provision would read more smoothly if “to the full extent of the law” were placed at the beginning of the provision. This was accepted as a friendly amendment. [No. 4 as amended: “**To the full extent of the law**, the University of Notre Dame will continue to admit undocumented students and provide supplementary financial aid for them in the event that DACA is terminated or curtailed and if undocumented students lose the right to work.”] Another member asked about the spirit of the original wording – did it indicate that the University will continue to support undocumented students if legal support were removed? LG explained that he had received a scholarship as an undocumented undergraduate student, and that he had also worked, but not in program that received federal funds. He asked “what if it becomes illegal?” and did not see a need to add the clause. JR opposed the amendment, and indicated that the original intent of the sanctuary movement was to recommend that Fr. Jenkins make a moral statement, in the event that the law changes and the students become “illegalized.” Another member raised the issue of federal money for research, audits, and consequences for international graduate students, even those supported by university funds rather than external research funds. MC indicated that there is a difference between what the law actively prohibits and where the law is silent. “To the full extent of the law” incorporates those situations where the law does not prohibit an action. Even if DACA is repealed, one still has room to maneuver under the law. Another member opposed the amendment, stating that the resolution is not a legal document, and that each provision mentions the law, so we cannot avoid a commitment to avoid action that could become illegal. No one knows what that this will mean in the future because things could change, but we can’t connect ourselves to those changed meanings. He added that this is a moral document, and that moral acts are not bound by the law. Another member supported the previous member’s statement, and also opposed the amendment, stating that each addition of “the law” waters down the resolution. Another member pointed out that if we want the support of more faculty, more would prefer such a caveat (“to the full extent of the law”) be included. Dan Hopkinson (student representative) also spoke against the amendment, and in support of the views expressed by JR, LG, and the previous two speakers, that the Senate should make the statement as strong as possible. He pointed out that the issue of legality came up in the drafting of the student resolution on sanctuary, and that students did not wish to risk losing federal funding. But they were willing to sacrifice a lot, even if it meant not complying with the law. Another member also spoke against the amendment, and felt that adding “the law” to each provision changed the tone of the resolution considerably. Another member felt that the references to “the law” would increase faculty support for the resolution. Another felt it was important to be prepared with a strong document for any eventuality. MC pointed out that there is a middle ground, and that we don’t go right to civil disobedience, but rather comply and challenge in court; she mentioned the Affordable Care Act (ACA) as an example. The law provides citizens the right to comply with and challenge the law. A member then asked about the meaning of “compliance”; would this mean that students would have to leave the University, after which the University would mount a legal challenge? MD invoked the legal concept of “immediate harm,” whereby the university would be able to put in place a legal

injunction to prevent expulsion of students or keep the status quo while going through the legal challenge. JR: based on this, the Senate should not add “to the full extent of the law” to this provision, as it will be asking Fr. Jenkins to continue the current policy and admit undocumented students. A member stated that he agreed with JR, and felt that the provision as originally stated did not go against the law. He shared the resolution with his department, and three-quarters of the respondents were strongly in favor of the original wording. Another member also agreed (against the amendment), and heard it as saying “the University will use the law to the fullest extent to keep admitting undocumented students.” Another member stated that half of the respondents from his department would not be supportive without the amended language, that 55-60% percent were in support, but several added that they did not know the implications of this for federal grants, and were concerned about the violation of federal law. Another member stated that Fr. Jenkins is already doing these things, and that the original provision is not asking the University to break the law. LG: added that he hoped that if the law changes to state explicitly that undocumented students were not to be accepted, that Notre Dame would continue to admit them.

JRS then called for a vote on the proposed change to provision no. 4:

In favor of the amendment: 5; Opposed:14 ; Abstentions: 2. The motion did not carry. [Provision no. 4 with original wording: “The University of Notre Dame will continue to admit undocumented students and provide supplementary financial aid for them in the event that DACA is terminated or curtailed and if undocumented students lose the right to work.”]

Tarek Dika (TD) then moved that provision no. 1 be amended with the following language, to be added at the end: “Should the law become inconsistent with the Catholic principles of Notre Dame, the University reserves the right to protect its students beyond the bounds of the law.” Seconded by Dan Hopkinson.

Discussion: One member disagreed with the letter of the amendment, but understood the spirit; he pointed out that Catholic principles are themselves malleable, and the phrase thus had no definitive meaning. TD explained that the open-endedness of “Catholic principles” was intentional, in order to give Fr. Jenkins the flexibility to invoke whatever principle he desired to act on at any particular time. JRS stated that she understood the spirit of the amendment, but pointed out that there are times when it is important that we have some latitude to act upon our moral principles. There is a long history of this being done, to get as close to the edge without going over the edge. To say “we’re going to break the law if it exists” removes the ability to get things done quietly. Another member spoke against the amendment, and pointed out that some of the points had already been made earlier in the resolution; he feared it would open up a morass of debate on “what are Catholic principles?” He felt that there is enough on this already in the document. He polled the emeritus faculty, and 65 expressed support for the resolution, while 10 were against; he thought this amendment would be divisive. The resolution already includes enough context on Catholic social teaching. JR: in terms of crafting the resolution, they tried to focus on what college presidents can do; he didn’t know if he could ask Fr. Jenkins to break the law. The resolution without this amendment is in accord with others around the country. TD: then if the law changes, would we allow federal officers on campus? Another member felt that provision no. 4 already did the work of TD’s amendment. Another member questioned the wording of no. 4, and stated that it seemed to refer to future (rather than current) students by implication; he asked whether the document protects current students. JRS said that it is implied. She added that we don’t gain ground by adding provisions that cannot be put into practice by the institution. Another member suggested the wording “... vows to take all avenues provided by the American legal system to protect our students”; JRS indicated that this change would take a separate amendment. Another member supported the spirit of the amendment, but felt that no. 4 was stronger without it. TD

explained that the reasons for it were two: (1) the need to state this explicitly, and (2), to add something that expresses our desire for the University to protect its students if the law changes. If this can be achieved by the current language, fine, but if not, this other wording should be considered. He needs reassurance that this language is sufficient. One must adopt the means to achieve the desired goal. JRS felt the situation was not that cut and dried. Another member voice opposition to the amendment, and suggested a possible solution: add “to the fullest extent possible.”

JRS then called for a vote on TD’s motion as originally worded:

In favor of the amendment: 0; Opposed: 20; Abstentions: 1; the motion did not carry.

Ben Heller then moved that provision no. 1 be amended to read “... will be protected to the fullest extent possible.” [No. 1 as amended: “The university affirms unequivocally that undocumented students are full members of the Notre Dame family who will be protected to the fullest extent possible ~~by our legal services.~~” The motion was seconded by Annie Coleman, who then called the question; this was seconded by Tarek Dika. The vote was as follows:

In favor of the amendment: 18; Opposed: 0; Abstentions: 2; the motion carried.

JRS asked for any further amendments.

Michael Hemler then moved that the introduction to the four provisions be amended as follows: “Be it resolved that the Faculty Senate of the University of Notre Dame urges Father Jenkins to ~~declare the university a sanctuary campus and~~ adopt the following sanctuary provisions:”; seconded by JRS.

Discussion: Hemler explained that for some this language is needlessly confrontational. Several other members preferred that the language remain, and one indicated that it would be cowardly if we were to omit “sanctuary” – we need to show solidarity with the students; this term means something to them. Another member pointed out that to use the term “sanctuary” is not to adopt a specific legal point of view, but to show solidarity with other movements around the country. Another member agreed, but asked if there was danger in using the term, in that students might believe themselves to be more protected than they actually were. Dan Johnson added that the term was used by those drafting the resolution because of its resonance. LG added that undocumented students are aware that the University cannot ultimately protect them if the government comes after them, but that such a statement of solidarity makes an existential difference. The student representative added that in their discussion, the word “sanctuary” not only meant keep students here, etc. but also was meant as support for those who suffered verbal attacks after the election. Some were emboldened by hateful rhetoric. The word “sanctuary” is more than just what Fr. Jenkins can put into effect.

Dan Hopkinson called for a vote on the amendment; seconded by Phil Sloan.

In favor of the amendment 2; Opposed: 18; Abstentions: 0; the motion did not carry.

JRS then called for a motion to vote on the resolution as amended, and reminded Senators that we needed at least two-thirds to pass the amendment.

In favor of the amendment: 20; Opposed: 1; Abstentions: 1. The resolution was adopted.

JRS: Thanked everyone for a civil debate.

The meeting was adjourned at 8:18 p.m.

Respectfully submitted,

Mary E. Frandsen, Senator from Music
Co-Secretary
(With additions from Dom Chaloner, Co-Secretary)