

Minutes*

Faculty Consultative Committee
Thursday, February 26, 2004
12:00 – 2:00
471 Mondale Hall

- Present: Judith Martin (chair), Gary Balas, Jean Bauer, Charles Campbell, Arthur Erdman, Dan Feeney, John Fossum, Marvin Marshak, Martin Sampson, Carol Wells
- Absent: Susan Brorson, Gary Davis, Jeff Ratliff-Crain (these three absent only because there was no telephone hookup available), Tom Clayton, Emily Hoover, Marc Jenkins, Fred Morrison
- Guests: Associate Vice President Donna Peterson, Marty McDonough (University Relations)
- Other: Jon Steadland (Office of the Board of Regents), Kathryn Stuckert (Office of the Chief of Staff)

[In these minutes: (1) legislative matter (stem cell research); (2) privacy and data security; (3) intellectual future discussion; (4) dance team congratulations; (5) retirement policy; (6) University Senate meeting]

1. Legislative Matters (Stem Cell Research)

Professor Martin convened the meeting at 12:05, welcomed Associate Vice President Donna Peterson from University Relations, and called for a motion to close the meeting. The motion was approved unanimously.

The Committee discussed with Ms. Peterson a number of matters related to the legislature.

-- The proposed legislation concerning stem-cell research (which would withdraw or reduce University funding if it conducts embryonic stem-cell research); the bill in the House has been withdrawn. There may be an informational hearing about stem-cell research, which the University would welcome. Legislators will be provided information about the efforts in New Jersey and California to provide state funding for stem-cell research and there may be a Senate proposal in Minnesota that would mirror the New Jersey legislation to provide state funding.

-- Ms. Peterson reiterated Dr. Cerra's main points: the research is legal, involves no public funding, and the stem cells are from in-vitro-fertilization clinics. The cells would be destroyed, stored, or donated for research; none of the cells are created for the purpose of stem-cell research. The main diseases the research is aimed at are such things as childhood diabetes, Parkinson's, and heart disease.

-- If the atmosphere for stem-cell research in the state and the country is bad, it is certain that other countries will recruit faculty from the United States.

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate or Twin Cities Campus Assembly; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.

-- The chief concern of the Senate Research Committee is that the legislature say nothing on the subject--that it neither approve nor disapprove the research, because for the legislature to speak on what research cannot or can be done sets a dangerous precedent. The research is now legal so there is no legislative statement needed, Mr. McDonough said, and the University's name is not on the proposed legislation; the aim of the legislation is to make it legal to use state funds for stem cell research.

It was agreed that the statement from the Senate Research Committee (which, later in the meeting, was later endorsed unanimously by this Committee) would be provided for information to the University Senate but would otherwise be held as an internal document unless Ms. Peterson or the administration wished to make other uses of it. The statement read as follows:

The Senate Research Committee of the University of Minnesota Senate urges the Minnesota legislature to respect the freedom of research and scholarship at one of the nation's great research universities and to take no action that would limit public funding for the University on account of stem cell research or any other legal research directions the faculty choose. We are deeply troubled by the possibility that the state legislature, or any other political body, might limit the research topics the faculty of the University are allowed to pursue. We recall with concern the case of Galileo, not the first and certainly not the last person whose research was condemned by the primary political authority of the time because it was ideologically unacceptable. That example has repeated itself throughout the history of higher education. We fear that research topics in addition to stem cell research could fall under the political microscope once the precedent is set.

We support the University's policies governing the conduct of research in general and the additional safeguards established for stem-cell research in particular, which have emerged after careful thought, considerable discussion, and conscientious review by the appropriate faculty committees. The primary principle at stake is that it is the University's faculty that drives its research mission. In the case of stem cell research, appropriate policies have been put in place to ensure that this research is conducted with care and without the use of public funds. If any proposed research is legal and the University has the capacity and the appropriate oversight mechanisms in place to conduct it, then the faculty have the authority to pursue it. The University does not and must not restrict faculty research; moreover, it would be inappropriate for any other agency to do so.

We believe that controversial research is best conducted at a public university. The research occurs in full view of the public, with appropriate regulatory controls and safeguards, and the results are available to all. It is at universities, institutions that foster debate and deliberation, that discussion about difficult ethical and medical issues take place. There are approximately 1,000 researchers at the University of Minnesota involved in research that can be advanced by use of stem cells. If the legislature adopts restrictive legislation, we worry--indeed, we predict--that the University will see the exodus of a considerable number of its premier scholars from many areas of medical research. The state's aspirations in the biomedical sciences will likely have been dealt a blow from which they will not recover. At the same time, however, the state will most assuredly allow the use of the results of stem cell research to save the lives of its citizens; restricting or prohibiting stem cell research simply means treatments and cures derived from stem cell research will not be developed in Minnesota.

Academic freedom is indispensable to the mission of higher education. Only with a commitment to it--vigorously practiced within academic institutions and supported broadly throughout society and by government--can the objectives be met of extending the reach of knowledge, solving problems facing the planet, and preparing individuals for productive and ethical lives.

Professor Martin thanked Associate Vice President Peterson and Mr. McDonough for joining the meeting.

Professor Balas said he wished to note for the record the thanks of the Senate Research Committee to the Task Force on Academic Freedom, chaired by Professor Duvall, for permitting the use of task force language in the statement; the last paragraph of the Research Committee statement is draft language that the task force is considering for its report.

2. Privacy

Professor Fossum next reported for the Senate Committee on Faculty Affairs on privacy. He recalled that this Committee had asked Faculty Affairs to look into the matter. They had extensive discussions focused on concerns about the extent to which the University can guarantee security and can protect against intrusions. The Committee decided not to adopt either policy or guidelines.

There is a great deal of legislation dealing with privacy and security. Most of the laws require the PROTECTION of data. The Minnesota Data Practices Act is comprehensive; it provides that any student or employment data are private--and if disclosed, the institution or individuals may be subject to penalties. What faculty do not know is that virtually all of their day-to-day transactions are public and discoverable. It is also almost impossible to get rid of email. **"If email is on your computer, you better figure that it exists somewhere,"** Professor Fossum said.

The University has major obligations to protect student and other data. More thought is needed about how faculty can know their obligations vis-à-vis privacy and how faculty can know that most of what they do is public. There is a compliance office, headed by Thomas Schumacher, and the President's Emerging Leaders are looking at privacy and security, and there are a number of University documents on the subject. The Faculty Affairs Committee concluded that anything it might do would be redundant because the existing policies appear to be comprehensive. What is really needed is training for faculty on their obligations and their lack of privacy. The Academic Health Center did a good job because of the HIPAA training. The Faculty Affairs Committee has urged the administration to train faculty about their obligations but has not specified how that should be done, although HIPAA may be a good model.

Would it be possible for the University to be more active in deleting email messages from servers after a month, Professor Balas asked? There is no legal obligation to keep them. Perhaps there should be guidelines about deleting all files after a certain period. Professor Fossum agreed this issue should be taken up, and perhaps referred initially to the Office of the General Counsel.

Professor Martin thanked Professor Fossum for his report; she said this was useful information and she fears that people do not know what liabilities they face if they are ignorant of the laws in this area.

3. Intellectual Future Discussion

The Committee agreed to move its intellectual future discussion to May 17, 9:00 - 11:00.

4. Dance Team Congratulations

The Committee extended its congratulations to the dance team and Coach Amber Struzyk for winning back-to-back national championships.

5. Retirement Policy

Professor Martin welcomed Jackie Singer to the meeting. Professor Fossum reported on a discussion at the Faculty Affairs Committee of the retirement policy that is being taken up by the Board of Regents. He reported that Ms. Singer had made presentations to the Retirement Subcommittee and to the Faculty Affairs Committee; the policy is straightforward and codifies what the University is doing, creates documents for the retirement plans, and it meets IRS regulations. There are some elements in the policy that will allow the University to improve benefits in the future, if it is able.

Ms. Singer reported that there is also a new plan to allow funds to be tax-deferred that is limited to a small group of highly-paid employees. Right now the plan covers only three employment contracts; if there are more, the group will never be large. Are these like CEO golden parachutes, Professor Campbell asked? Ms. Singer said that the University has contracts in place for some employees that includes deferred compensation; at present that deferred compensation cannot be tax-deferred but this policy would allow it.

Is it a good idea to focus on high-level compensation when the University just went through a strike by clerical workers and has not provided salary increases to anyone this year, Professor Balas asked? Ms. Singer agreed with Professor Balas's sentiment; she said that the policy simply addresses what the University is already obligated to do, it does not create any additional obligations. The incentive for taking action now is because the first payment on these contracts is due soon. The contracts included a provision that the University would make its best effort to create a retirement plan so these funds could be tax-deferred. It has taken awhile to get the plan in place.

This also codifies how the University should handle what has already been negotiated, Professor Fossum added, and it also protects University interests. What is also important is that the University has been running without an overall policy; this basically cleans up the stables.

If this plan is adopted, will it be available to other faculty who might want to defer compensation, Professor Marshak asked? To be eligible, Ms. Singer said, one must have the title of vice president or higher or must have income above the amount the IRS allows under IRC 401(a)(17), which is, in general, the maximum amount of compensation which may be considered in a qualified retirement plan (at present, \$205,000 per year). Human Resources has taken the position that participation in the program must be within the programmatic interests of the University, not something one can participate in by choice.

Ms. Singer also noted that the present obligations of the University for this plan total \$160,000 if all the contractual obligations are fulfilled by both sides.

Professor Martin thanked Ms. Singer for joining the meeting.

6 University Senate Meeting

The Committee turned next to a discussion of the University Senate meeting that followed this meeting. Professor Martin reported that the Parliamentarian had ruled that the discussion of Mt. Graham falls under the provisions of Article VII(2) of the Senate constitution, which provides that in the case of a dispute between the Senate or one of its committees and an academic unit, the matter is referred to the President. That would mean that the Mt. Graham issue effectively could be off the Senate docket.

Professor Marshak said that these issues of conflicting claims are important issues around the world and should be discussed in a reasonable way. That does not mean they should be discussed in the University Senate. Professor Wells urged that they not be discussed in the Senate. Professor Martin said that academic freedom does not allow such debate to be restricted if it is brought by a committee of the Senate. Professor Balas pointed out that if the majority of the body wants to take up an issue, the body must do so.

Professor Martin said she had asked Professors Balas (Senate Research Committee) and Kuchenreuther (Senate Committee on Social Concerns) if they wished to spend time in the Senate on something that can go nowhere as policy.

One good thing that came out of this, Professor Balas said, is that he has developed a working relationship with Professor Kuchenreuther and that they have agreed that their committees might jointly discuss the issue of wild rice genetics research.

The whole question is about academic freedom to do research, Professor Marshak maintained. What are the boundaries? The research must be legal; it must conform to the regulations (e.g., use of human subjects, etc.); what else? Can any research that is legal and does not run afoul of regulatory bounds be done? Are there things that should not be researched even if they are legal? The way it is managed, Professor Martin observed, is that one does research that one expects to be published. And there are a large number of internal committees to be sure that research is ethical and moral, Professor Wells pointed out; she needs six approvals in order to do her research. Professor Fossum said that a faculty member is free to inquire about anything but must observe the institutional rules that are in place. The University could adopt the "preventive principle," Professor Sampson said, which holds that if one does not know the results, one should not do the research, but that would do great harm in a university. It is important that the university be a place where one can take risks, understanding that sometimes things may not work out.

Professor Martin adjourned the meeting at 1:45.

-- Gary Engstrand