

MINUTES

Senate Research Committee April 5, 1991

Present: John Sullivan (chair), Signe Betsinger, Mark Brenner, N. L. Gault, Robert Herman, Tony Potami, Dan Sargent, Winifred Schumi

1. **Signe Betsinger welcomed the committee to the St. Paul Campus.**

2. **May Third Meeting Agenda**

John Sullivan announced that at the May third meeting Vice President Kuhl will talk about the budget and the impact of reallocation in relation to the role of research at the University. Vice President has asked for any particular questions the committee would like addressed. Sullivan said he will send a list and requested suggestions.

It was suggested that the presentation address the question of administrative and other support of research, whether and how support would be centralized and, if research is a focus, how it will be supported in the infrastructure. Another question regarded conflict and tension between improving undergraduate education and becoming a major research institution, considering that the best researchers are not always the best teachers for undergraduates. Regarding this second issue, SLC members commented on the need of undergraduates for contact, models, and advising and the need for good teaching to receive recognition. It was observed that there is a political or public relations dimension to this issue. Faculty need to be able to communicate with people not trained in their disciplines, not only to teach, but to explain research to panels, and others. There are particular problems in a large public institution with a wide variety of students. The relationship of research to teaching has been a perennial problem, it was noted. The two can complement each other, but the University needs to take a position on the question and give it appropriate attention.

3. **Policy on Misconduct in Research and Scholarly Activities** **Mark Brenner**

Dean Brenner traced the background of the policy, saying that an interim administrative policy was developed in 1989 by a subcommittee chaired by Dean Brown. The National Institute of Health now requires institutions receiving their support to have a policy to be in place. The Office of Scientific Integrity of the Department of Public Health also has pushed for on-going development of such policies. Some of the ideas incorporated in the revision of the University's policy were derived from recommendations made at an OSI workshop, he added. One such change is to replace the word "fraud," which has a connotation of loss of property in common law, with "scientific misconduct." Another recommendation relates to development of a process similar to peer review rather than a judicial proceeding.

Brenner commented that the OSI had not realized at the start of the process all the legal and technological complications involved in the use of computers in research. The data belongs to the university as part of the principle investigator's contractual relationship. Primary data should stay with the university. This was simple enough when data was recorded in research notebooks; when it is entered in a computer the earlier files need to be copied onto disks or printed for a permanent record each time changes are made. This is a protection for all concerned, but is complicated and time consuming. Neil Gault observed that researchers from different cultures with different practices may not recognize the need to keep all data, and need to be informed and reminded. Brenner added that NIH grants also require a component dealing with education in the ethical issues, this explanation of data preservation could be included in that.

Tony Potami said that the steward of the research is the faculty. It is possible to remind faculty members of the ethical principles and practical techniques of handling data, but those who want to cheat will be able to do so. Brenner responded that industry has much experience in this area related to preserving data to establish patent rights. The University can learn from their procedures for printing, dating, and logging data. It is true, however, the responsibility lies with the investigator. Potami added that data collected apart from a grant still belongs to the University. Gault said that the Medical School used to have a policy of contributors review of publications. Brenner said that the Experimental Station does the same, and requires a review form. There is a question, however, of who should sign off on the forms, the co-authors or all contributors, and of the role of the university and the publisher.

Brenner then distributed copies of the proposed policy and pointed out changes in the current version. A panel of senior faculty replaces the senior administrative officer as the locus for submitting an allegation of misconduct. One or several members of the panel could be approached and the anonymity of the complainant maintained at the initial stage. If the complainant wishes to pursue the allegation, a written allegation is submitted to the Senior Vice President for Academic Affairs, who will refer the case to the academic vice president of the unit. Removing responsibility from the dean's office avoids a possible conflict of interest in initiating an investigation in one's own department, Brenner explained. Committee members suggested that the Vice President for Research should be involved routinely. Brenner added that the committee or panel would have a limited area of responsibility, providing advice, but not handling an investigation. Signe Betsinger suggested that the fewer persons are involved at the early stages, the less opportunities for rumors and leaks exist.

In response to a question about how many cases of misconduct are alleged each year, Potami said that last year, according to the report to the government, three allegations were made and two of these were dismissed. Brenner added that the current OSI practice is that when enough cause exists to justify an investigation, the university is required to inform the OSI, which informs the NIH and the individual being investigated. At that point no further action is taken by the granting agency, but if the grant is at a stage where support is ready to be negotiated, the grant will not be increased at that time. This has the potential to damage an investigator at an earlier stage than is necessary and has the implication of guilt before anything has been proven. OSI has said it will look into this problem, Brenner added, and if this requirement is lifted it would be possible to hold a thorough inquiry before informing agencies.

The next stage in the proposed policy is an inquiry committee. There was discussion of whether the panel should have the same membership for inquiry and investigation or should be expanded from three to five members at the investigation stage. The inquiry committee merely checks to determine if an investigation is justified, while the investigation committee looks at all the evidence. Gault suggested that introducing some new blood at the investigation stage would avoid the possibility that the committee's thinking has been colored by the original inquiry. At the investigation stage, the respondent can bring evidence in defense. Brenner said that the hearings are recorded and the respondent is able to rebut throughout.

The question of legal counsel was raised. The committee could need legal advice to prevent it from transgressing its responsibility. If there is counsel for the respondent the question of who pays for this must be considered. Brenner said that the New York University legal counsel commented at the OSI workshop that the presence of counsel can move the process along faster, but there is also the potential for counsel taking over the proceedings, and that therefore counsel's role should be specified as simply advisory. John Sullivan asked whether "wise counsel" might be used instead of "legal counsel." Brenner said that this could be a possibility. He pointed out that the stakes are higher for the respondent, who needs a reasonable chance to make proper response. Legal people tend to examine the process minutely, while what is most desirable is the ability to do what is appropriate in particular situations without this being a deviation from process. Anonymity is very important, Brenner added, and protection is needed for whistle blowers. If the case is pursued, it may not be possible to maintain anonymity throughout.

Gault suggested that retaining the same three members for both committees would keep the circles of those involved small and avoid having to have new people learn what the Inquiry committee already knows. Brenner suggested that the Inquiry committee, if they suggest proceeding with an investigation might have the option of requesting additional members. James Ysseldyke observed that the University of Wisconsin has an entirely new committee at this stage. Sullivan said that this parallels the use of a grand and petit jury in the legal system, and pointed out the likelihood that the preliminary inquiry would have shaped the committee's opinions, leaving them less able to remain objective.

Responding to a question about how the importance of committee members having expertise in the respondent's field, Brenner said that there is no prosecutor and the panel needs to be able to ask the right questions to elicit the necessary information, and would therefore need to understand the research. Specific expertise would not be necessary for the Inquiry committee; persons with the appropriate expertise could be identified and added at the inquiry state. Brenner added that the investigation would deal with what occurred, not with the respondent's intent. Gault observed that there can be actions which are misconduct but are not so intended. It was suggested that the inquiry committee be called the Science and Scholarly Activity Committee, and that its concern be understood as dealing with the integrity of the scientific enterprise.

Betsinger noted that so far what has been considered is in the area of physical sciences, and asked whether the considerations about data apply equally to the social sciences. It was generally agreed that they do. Brenner added that the OSI has no statute of limitations on how long data must be kept.

Once the complete investigative body makes a decision, Brenner said, they can make a recommendation to the senior administrator. Discussion followed on whether the final stages of the process should involve more faculty. It was observed that the Tenure Code and Grievance Policy are already in place, but there may be no reason to involve the Grievance Committee if the respondent doesn't choose to. Brenner said that an argument for engaging the Grievance Committee was that when it was revised it was with the idea of providing one basic point of resolution. However there are arguments against prolonging the process. Involving senior administration at this point was intended to give an institutional history which could have future application. Gault suggested that the senior administrator might be required to consult with the Vice President for Research and Academic Vice President, adding that a record is needed if the respondent leaves the institution. Brenner said that in the current version of the guidelines the case is pursued and a letter placed in the files.

Sullivan asked whether if a criminal act is involved but not federal agency which requires notification is concerned the University is obligated to report the incident. Brenner said he will ask for clarification from the University Attorney.

Another suggestion was that the policy should address the question of protection for a whistle blower who might suffer retaliation before a formal process was begun.

Brenner said that he will make further revisions suggested by this discussion and present them at the May meeting. Meanwhile anyone with further suggestions is invited to contact him.

The meeting was adjourned at 10:15

-- Catherine Winter