

Minutes*

**Senate Research Committee
Monday, September 15, 2008
12:30 - 2:15
238A Morrill Hall**

- Present: Dan Dahlberg (chair), Melissa Anderson, Linda Bearinger, Saif Benjaafar, Arlene Carney, Jerry Cohen, Tricia Conway, James Cotter, Leslie Delserone, Genevieve Escure, Tom Hayes, Michelle Lamere, Jennifer Linde, Timothy Mulcahy, Mark Paller, Federico Ponce de Leon, Steven Ruggles, George Trachte, Andrew Van de Ven, Karen Williams, Jean Witson
- Absent: Peter Argenta, Robin Dittman, Bridget Helwig, Frances Lawrenz, Joel Slaton, Lynn Zentner
- Guests: Jon Binks (Office of the Provost), Wendy Lougee (University Librarian), Greg Brown (Office of the General Counsel)
- Other: Peggy Sundermeyer (Office of the Vice President for Research); Associate Vice President Pamela Web (Sponsored Projects Administration)

[In these minutes: (1) research with human embryos or embryonic stem cells; (2) copyright administrative policy; (3) committee schedule and issues pending]

Professor Dahlberg convened the meeting at 2:15, welcomed the new Committee members, and called for a round of introductions.

1. Research with Human Embryos or Embryonic Stem Cells

Professor Dahlberg turned to Assistant Vice President Paller to discuss proposed changes to the policy on Conducting Research with Human Embryos or Embryonic Stem Cells and the associated procedure on preparing to conduct such research.

Dr. Paller explained that the University's original policy governing research with stem cells was very advanced and Minnesota was one of the few universities to have a policy. In 2005, a committee of the National Academy of Science (NAS) published guidelines on research using embryonic stem cells. The Minnesota policy had most elements of the NAS guidelines covered, but the NAS guidelines included establishment of a committee to oversee stem-cell research. Over the years, the NAS guidelines have become de facto regulations and the University follows their essence. The proposals before the Committee today create an ESCRO (Embryonic Stem Cell Oversight Committee) along the lines recommended by NAS, with full responsibility for oversight of stem-cell research, activities not covered by the IRB or other oversight.

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

The ESCRO will have 10 voting members in five categories: 2 bioethicists, 2 basic scientists, 2 community members who have no affiliation with the University, 2 practicing physicians, and 2 experts in stem cells and reproductive medicine. A quorum for the committee will consist of at least one member from each of the five categories.

Ms. Witson inquired what the process would be for selecting the ESCRO members to prevent "stacking" the committee. Dr. Paller said that Senior Vice President Cerra would select the members but recommendations for members may come from anyone. He invited Committee members to send him names. Those who do stem-cell research will naturally be in favor of proposals that come before the ESCRO; the other members could bring any point of view. There will be no litmus test for membership. At the same time, Ms. Witson asked, is it not general University—Regents—policy that the University will do stem-cell research? It is, Dr. Paller affirmed. So anyone serving on the ESCRO cannot be there to block research. Dr. Paller agreed; the University has a policy and appropriate research oversight and will conduct stem-cell research within certain limits (e.g., no cloning or animal chimeras).

It will require a majority vote of the ESCRO to approve a research proposal, but the ESCRO once appointed (within the next couple of months) will have to work out the details of how it will conduct its business. There may be different categories of review and approval, such as registration only, approval, not approved, and so on.

Professor Bearinger said the appointment of ESCRO members by Senior Vice President Cerra could present the appearance of a conflict of interest. Has there been discussion of removing the appointing authority somewhat away from the University's central administration? There has not, Dr. Paller said, and the Regents approved their policy without making such a suggestion. Professor Dahlberg asked who the alternative might be; Professor Bearinger asked who appoints the IRB. Vice President Mulcahy reported that he does, and he also appoints IACUC, the biosafety committee, and so on. One could make the same complaint about those groups, Professor Dahlberg observed. Professor Bearinger suggested that Vice President Mulcahy might also appoint the ESCRO. Dr. Paller said he did not see what difference that would make; Vice President Mulcahy is judged by the amount of research done at the University, so if the ESCRO turns down research, he is out of a job. Dr. Mulcahy said that the reporting line for stem-cell research, to Dr. Cerra, was established before he arrived at Minnesota; he said he believed it should stay that way. He thought it was worthwhile to air the potential perception, but he would have the same problem as Dr. Cerra if he were to be responsible for appointing the ESCRO: it is difficult to find individuals in the University who fit the membership categories who do not support stem-cell research.

Professor Cohen said it is very important to define what the ESCRO is to do. The University has made a commitment to stem-cell research; the ESCRO is not in place to challenge that commitment but to protect the University by keeping the research within the limits it has set. It is not a committee to appease the public about what the University is doing, it is to be sure that research fits the ethical and other guidelines established by the University. The appointment of the ESCRO will not convince those opposed to stem-cell research that this is acceptable. The appointments should be of people who want to protect the University, not change the public's mind on stem-cell research.

Committee members inquired about whether the reason for the establishment of the ESCRO should be expanded. Dr. Paller said the University is doing so because it fits with national guidelines, but it will not say that it is required to do so because there is no formal mandate to create such a committee.

He said such information might be in related materials, but the University should not say it created the ESCRO in response to guidelines because, should the guidelines change, the University would then have to change its committee or policy.

Professor Dahlberg inquired about language requiring PIs to participate in training through Sponsored Projects Administration if they are to conduct ineligible research (that is, with stem-cell lines not approved for use by the federal government). Will a requirement to go to school deter PIs? Given the circumstances surrounding the new financial system, requiring training is scary. Associate Vice President Webb said the people simply need to contract her and she will set up training. It is about 60-90 minutes spent on going through the regulations and thinking about them. It is not especially burdensome and people who have gone through it seem satisfied.

Vice President Mulcahy wondered if it would not be better to use different terms because the language about training could be a deterrent, given that it has a rather negative connotation right now. Dr. Paller said he was open to suggestions, although noted that the policy and procedures apply only to a small number of faculty who are aware of the requirements. This is not information about guidelines, this is about things they must do. It cannot be softened because this is what the University will do.

Professor Van de Ven asked if this is an innovation at the University or it is a practice well-established at peer institutions. Is there anything unique about this proposal? There is nothing unique about it, Dr. Paller responded, and the University is using the same terminology as others, drawing on the NAS guidelines. A number of institutions have worked on best practices but nothing has changed in terms of the type of research that will be done, only the oversight. It places the University in conformity with the practice of its peers.

Professor Escure asked about the meaning of the phrase "involves no more than minimal risk to the embryo" (a condition that must be met if the research is federally funded). Dr. Paller said the ESCRO will deal with the question and will have experts to help it. An example, however, might be in fertility, where a researcher may create embryos for implantation and will collect data on them—this would be research ABOUT embryos, not ON them. It could involve the rate of thawing versus adding chemicals—these are up to experts in the area to deal with. The training required has to do with stem-cell lines.

And what about research for therapeutic purposes, Professor Dahlberg asked. For example, the parents of a child with a genetic disease might create embryos and select one without the genetic problem to avoid having a child that has the disease, Dr. Paller said.

In terms of language dealing with unanticipated problems, Dr. Paller said they would arise in the context of research. The ESCRO will want to know if something has happened and it would have the authority to terminate the research.

Professor Dahlberg thanked Dr. Paller for the presentation. The Committee offered no objection to the revised policy and procedure.

2. Copyright Administrative Policy

Now Professor Dahlberg invited Ms. Lougee and Messrs. Binks and Brown to come to the table to discuss the draft administrative policy on copyright. He noted that the Committee had reviewed the

proposed Regents policy on copyright; this is the administrative policy intended to implement the Regents policy. When the Board policy was being considered, FCC had a number of questions that were ultimately answered.

Ms. Lougee began by noting that this is the second phase, as Professor Dahlberg pointed out, recalled that she and Professor Ruth Okediji from the Law School co-chaired the group that drafted the Regents policy, and said that she and Professor Okediji also co-chaired the group that drafted the administrative policy before the Committee today. The text of the policy read as follows:

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Copyright protects and promotes the creation of intellectual assets that are critical to academic endeavors and thus is fundamental to the creation and sharing of knowledge. The Board of Regents Policy: *Copyright* and federal law establish rules governing the ownership of works created by University faculty, staff and students.

Copyright Ownership by Faculty and by Employees with Faculty-Like Appointments. University faculty and University employees who have a "faculty-like" appointment own the copyright in their academic works as provided in Board of Regents Policy: *Copyright*. A person may perform faculty-like duties as part of his or her position and, therefore, under Board of Regents Policy: *Copyright*, be deemed to have a faculty-like appointment in connection with those particular duties only; the balance of the person's duties would not constitute a faculty-like appointment.

The dean or the chair/head of the relevant unit will decide whether an individual holds a faculty-like appointment based on the definition of faculty-like contained in Board of Regents Policy: *Copyright*. The decision whether an individual holds a faculty-like appointment may be appealed as provided in the Resolution of Copyright Disputes administrative procedure. Such decision is relevant only in relation to Board of Regents Policy: *Copyright*.

Copyright Ownership by Students. Students own the copyright in works created in or as part of a University course. Nevertheless a University college, department or unit may reserve rights to use the work consistent with the rules and guidelines of the relevant college, department or unit. The University may require a student, as a condition of enrolling in a course or course of study or otherwise participating in a University activity, to permit it to reproduce, distribute, display, perform or otherwise use a work the student authored. The University also may require a student to permit the University to archive a work created and owned by the student.

The University owns the copyright in works created by students as part of their employment by the University, for example as research or teaching assistants. The University will permit a University faculty member or a University employee who has a "faculty-like" appointment to use a work created by a student as part of the student's employment as the University faculty member's or such University employee's research or teaching assistant. The permission extends to using the work in performing academic duties (including creating an academic work) at the University. The University generally will not assert ownership interest in the copyright in an academic work authored jointly by University faculty or University employee who has a "faculty-like" appointment and by a University student employed as a research assistant. The University will only claim copyright ownership in such a work if the work is a directed work, a work specially ordered or commissioned by the University, a work created in connection with the administration of the University or a work created pursuant to a contract with an outside sponsor that provides for University ownership of the copyright in the work.

Copyright Ownership by the University. Federal copyright law vests in an employer ownership of the copyright in works authored by its employees in the course of their employment. Federal law, however, permits employers to vest that copyright ownership in its employees in designated works or classes of works. Consistent with federal law, the University owns the copyright in works created by University employees in the course of their employment except for ownership rights vested in faculty, University employees holding a "faculty-like" appointment and students as provided in Board of Regents Policy: *Copyright*.

The University owns the copyright in audio and visual recordings or transmissions of courses, lectures or other events delivered by University faculty, staff or students to University students and others. However, the University's claim extends only to recordings or transmissions created by it or its agents or contractors, not to recordings created by faculty or University employees with "faculty-like" appointments at that person's direction and instigation. The University's recording or transmitting of such a lecture or other audio or video presentation, standing alone, would not grant the University under federal law any ownership interest in an academic work presented in the lecture or presentation.

Ownership of Joint Works. Federal copyright law grants authors of a joint work equal ownership and rights to use the work. Federal law permits such authors to agree to different ownership and use rules. The University encourages authors of a joint work created at the University to enter into a written agreement providing for ownership, attribution, use, sharing of royalty or other income, and the registration and protection of the work.

Registration and Protection of Works. The University will not register or otherwise protect or enforce the copyright in works it does not own. The University may register and protect the copyright in a work in which it has some right, title or interest.

Management of Copyrights. Having a more open access to works created by University faculty, staff and students, directly and strategically benefits the University and University faculty, staff and students who will use the works. The University encourages owners of academic works to manage the copyright in the works so as to provide the greatest possible scholarly and public access to the works.

Credit and Attribution. Irrespective of copyright ownership, there is a professional and ethical obligation of University faculty, staff or students to credit or attribute creation of a work appropriately.

Reports. Annually, the Senior Vice President for Academic Affairs and Provost (or designate) will report to the Faculty Consultative Committee on the implementation of Board of Regents Policy: *Copyright* and the related administrative policy and procedure.

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Ms. Lougee reviewed briefly the history of the development of the proposed policy. Two years ago the existing Regents policy on intellectual property was split in two, with one addressed to commercialization of intellectual property/technology transfer and one on copyright. The Board's copyright policy explicitly recognizes the "teacher's exception" to general copyright law (which gives ownership of work produced by employees to the employer) and gives copyright ownership of academic works to the faculty and faculty-like employees. The Board policy also provides, however, that "work for hire" (work produced by other employees) is owned by the University. The policy also created a category of work, a "directed work," whereby a faculty member agrees to undertake a work requested by the University and for which substantial resources are provided and for which there is an agreement. The

Board policy also encourages individuals to manage their copyright rights in a manner that enables broad access, for example, retaining rights to use a work on campus or in their teaching.

Following adoption of the Regents policy, Ms. Lougee said, the committee drafted the administration policy. In the process, it met with an FCC-appointed committee to advise on copyright, a similar CAPA-appointed committee, invited the graduate and professional students to meet (they didn't), and met with a representative of the Academic Health Center about online materials. A lot of questions arose in those contexts that are really not copyright issues per se, but rather relate to other issues such as academic freedom, human resources, and so on.

The committee has also sent to the Provost recommendations about the infrastructure needed to support the policy, which include expanded educational and consulting services in the Library to help faculty, students, and staff with copyright and the appointment of a faculty advocate when questions arise about copyright ownership.

Policy areas that need attention in the future include software (covered by the commercialization policy), online educational materials, and openness (that is, the University's position vis-à-vis its own intellectual property as well as that owned by others).

Mr. Brown, who served on the drafting committee that Ms. Lougee and Professor Okediji co-chaired, explained again that the Board of Regents opted out of the provision of federal law that says employers own work produced by employees. For faculty and faculty-like staff, the University will not claim copyright ownership in their work.

The drafting committee had four objectives, Mr. Brown said. One, amplify on the Board policy (e.g., clarify the rights of faculty-like staff); two, recite the law where appropriate (e.g., students own the copyright in works they produce for a class); three, in other places the committee "made law," consistent with regental intent, by providing, for example, that when a faculty member and student employee (an RA, for example) jointly create a work, the University will disclaim any ownership in the work even though, under the law, it owns copyright as well because of the work of an employee); and four, to cover miscellaneous administrative matters, such as the requirement of an annual report. The focus of the policy is on copyright ownership and not use, Ms. Lougee observed.

Professor Ruggles inquired what the questions from FCC had been. They were about the Regents policy, not this one, Professor Dahlberg said. Ms. Lougee noted again that FCC had appointed an ad hoc committee to work with her committee on development of the policy and their concerns centered on (1) directed work or work performed under contract, and (2) instructional materials. The Regents policy provides that in the case of directed work, the institution must commit "substantial resources" to the project (above and beyond what the faculty member would normally have in the course of his or her work); the phrase "substantial resources" is one used by many of the policies adopted by the University's peers. The University's policy, however, bounds it even more by providing that the faculty member must agree to the work, so it is not only that substantial resources are devoted to it. The other concerns expressed by FCC related more to academic freedom than copyright and arose from questions about instructional teams, designers, and fears that faculty work would be altered without their consent. There are a number of scenarios that could arise and it will help to have a research center that help address the questions.

Professor Van de Ven pointed out that many graduate students work on a fellowship or a grant and perform as an RA or a TA while pursuing their doctorate. They are encouraged to work with faculty. How will the policy deal with these blurry lines, when a student may work in more than one category at the same time? Ms. Lougee said that students own the work they do in the course of study but work they do as an RA or TA falls under the "work for hire" provisions of the law. In some cases students may submit as course materials a paper prepared in a research project, Professor Van de Ven observed; that is a hybrid, Ms. Lougee responded. Professor Cohen said that "hybrid" characterizes much of graduate education. Ms. Lougee said she could imagine parsing what was done for a course and what was done in the course of employment. Professor Cohen said he assumed dissertation copyright ownership will not change and that it remains with the student. Ms. Lougee said the University never intended to assume ownership of student work created in the context of their course of study; students will own the copyright to their dissertations (although the University reserves certain rights such as the right to archive them).

Professor Cohen said the draft policy looked good to him.

Professor Escure asked about the definition of faculty-like; what personnel does it cover? Postdocs? Visiting professors? Ms. Lougee noted that there is an FAQ on the web but said that normally a faculty member is a faculty member, visiting or not, even if something is a joint work owned by two faculty members, regardless of the nature of their faculty appointment. Postdocs are treated by the policy as faculty. P&A staff who have faculty-like appointments own the copyright to their work. Many P&A staff create academic works and they own these copyrights. Dr. Paller noted that in some cases (e.g., a senior scientist), their entire job is devoted to faculty-like work. Or they can be instructional staff, with the same result, Dr. Carney observed.

What about curricular materials created by two people at the University and submitted as part of a training grant proposal, Professor Bearinger asked? There are a lot of questions wrapped into that situation, Ms. Lougee said. Courses themselves cannot be copyrighted. Tangible products used in the course can be copyrighted (handouts, PowerPoint slides, etc.). In the case of grants, the sponsoring agency may have provisions about who owns copyright. The University, however, would not claim any interest in instructional materials created in a grant application. Ownership could shift if the agency demands it, but ownership in the proposal would not.

Professor Ruggles agreed with Professor Cohen; he said the draft policy sounds great.

Professor Dahlberg concluded the Committee would forward the draft policy to the Faculty Consultative Committee and he would report that it had no problems with the draft.

3. Committee Schedule and Issues Pending

Professor Dahlberg next asked Committee members to review the scheduled agenda items for the year (thus far) and to comment on the list of issues pending. He said all Committee members were welcome to add to the list or to point out issues they believe must be addressed.

Professor Van de Ven asked how he is to interpret this "incredible" list. Are there issues that have been addressed or some that are in the pipeline? And how does an issue get on the agenda? Professor Dahlberg reported that he met with Vice President Mulcahy and Associate Vice President Lawrenz to identify the high-priority issues. To add to the list, a Committee member merely needs to

send him an email suggesting an item. Some filtering must occur or the Committee could end up dealing with foolish items, Professor Van de Ven commented. Professor Dahlberg said the Committee members are all partners in identifying what they will deal with in terms of issues that affect research activities across the University; if anyone has strong feelings about something, they should let him know.

Professor Escure asked, apropos a discussion of metrics and measures that will come to the Committee, if the University has made it into the top three yet. Vice President Mulcahy said it is very difficult to come up with an ordinal ranking that sums up the essence of the University. One can select areas to measure. There are a lot of questions about the US News & World Report rankings, for example. It is a complicated issue, but in its simplest form it means the University wants to be improving. There is a report coming from an FCC subcommittee, Professor Dahlberg said, devoted to a discussion of measures of research and scholarship only.

Professor Bearinger said she found one of the most worthwhile discussions the Committee had was with deans and department heads about changes in the University's research capacity and would value such a conversation again. Professor Dahlberg said he sent out a questionnaire to department heads and deans and the results will be on the agenda later in the fall. Vice President Mulcahy has agreed to provide support to compile the results.

Professor Cohen said he would like to see a discussion at the Committee about how the new financial system (EFS) is shutting down research. Professor Dahlberg said the old system (CUFS) had to go and that EFS is used by many universities. But those institutions should have gone through the labor pains and it is not clear why the University had to be a midwife to the new system. No two institutions are alike, Dr. Mulcahy said, and what Wisconsin may have done in implementing the system would not work here—a lot of prior experience elsewhere would not apply to Minnesota. A lot of it is stupid, Professor Cohen said. Ms. Lamere said that it is a case of GIGO; the reports now are so messed up no one knows what funds they have.

Professor Ruggles said that an item for the agenda should be that faculty are now operating blind; the old financial programs for research do not work so everyone must guess. The old reports were not that great and one understands that the new reports must be programmed. The Committee could have a discussion about the kind of reports faculty need to manage research reports, what old reports are not needed, and identify priorities in research reports that are needed. He urged that the Committee do so before a lot of report programming has already been done. Vice President Mulcahy said the best ones to talk about the topic would be from his office and Sponsored Projects Administration so that they could work on getting the reports that are needed. Committee suggestions would be a productive contribution to their work. Professor Ruggles suggested that Dr. Mulcahy's office make a presentation on plans for research-related reporting and the Committee could respond with suggestions.

Professor Bearinger said there are significant implications for failing to file no-cost extensions; she said she is sure the University has lost money.

Professor Bearinger then recalled that in the minutes from last year at one point the Committee raised the issue grant procedures for research that is intercollegiate as well as inter-grant. The Committee should address it. For example, how can different grants support a single activity? There was yet-to-be-determined language on how that could happen. Professor Dahlberg asked Professor Bearinger to identify the specific questions and the Committee would discuss them.

In terms of compliance, Ms. Lamere said, with Forms Nirvana a PI could sign off; now there is nothing. Ms. Webb said there is no federal regulation requiring a PI to sign but there is a regulation requiring that the PI be the one driving the train. Vice President Mulcahy said he did not know the specifics of the process but that his office uses this Committee to identify major concerns from the research perspective so that they can represent the concerns on behalf of the research community. It may be that some things cannot be changed; in other cases, there may be ways to improve things. He said he too is concerned about EFS implementation and the ability of people to do research. This is a good group to make constructive suggestions on how to do things better. After the Committee helps him compile a list, he will have a conversation with Mr. Volna about research-related needs.

Professor Dahlberg adjourned the meeting at 4:00.

-- Gary Engstrand

University of Minnesota