

SENATE RESEARCH COMMITTEE*
Minutes of the Meeting
June 2, 1995

PRESENT: Allen Goldman (chair), Eric Klinger, Susan Hupp, Mark Brenner, N. L. Gault, John Basgen, Kathy James, Signe Betsinger, Tony Potami, Mark Snyder, Jeylan Mortimer

REGRETS: Paul Sackett

ABSENT: Henry Buchwald, Jean Kinsey, Rob Super, Dongli-Su

GUESTS: Mark Rotenberg (General Counsel), Mark Bohnhorst (General Counsel), David Berg (Management Planning and Information Services), Fay Thompson (Environmental Health and Safety)

OTHERS: WinAnn Schumi, Moira Keane

The minutes of the last meeting were approved.

Faculty Legal Responsibilities in the Conduct of Research and the Advising of Graduate Students

Mark Brenner, Acting Vice President for Research and Graduate School, Mark Rotenberg, General Counsel, Mark Bohnhorst, General Counsel, and Fay Thompson, Environmental Health and Safety, were called on to discuss faculty legal responsibilities in the conduct of research and the advising of graduate students.

The Grants Management Project brought many of these issues to the forefront, noted Professor Brenner. The project clarifies that the principle investigators for research projects have supremacy of oversight activities, both in science and some of the fiscal activity. Currently an action plan is being developed relative to policy and management systems that properly inform individuals who deal with the various aspects of grants.

The process implies that there are non trivial responsibilities that are already borne by faculty who are serving as principle investigators, one member commented. There is a concern that the level of accountability will go up with the implementation of the new system and rules. It is not clear that principle investigators have enough information to function in the way that is envisioned. Professor Brenner responded that there will be clarification of who is responsible for what and perhaps will be responsible for more than what is acknowledged currently. In most cases PIs act responsibly in the management of their grants, Mr. Potami said. There are departments and colleges that are better than others in helping faculty manage grants. Relative to the Grants Management Project, the main focus has been on the central systems that are needed to enhance the ability of the system to provide information. There are some areas of at the University that do not have equipment and adequate staffing to utilize the system. This is recognized, he said. The problem is that they are not sure what system will be used. The project will also look at the impact the changes have on departments, PIs and resources.

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Is there going to be any formula for returning indirect costs or any way that departments that may be on the short end of infrastructure support can actually interface properly with these central systems, it was asked? Professor Brenner responded that they started moving in this direction, noting an important caveat -- they added 1.5 million dollars in additional ICR dollars to go back to units in direct proportion to how they would generate it. The money was assigned to the provost. It is recognized that departments are able to manage their affairs with respect to research. Once the system is in place the picture will be clearer, Mr. Potami commented.

Another member expressed concern that faculty and others who sign off may not have adequate training. It was recommended that as faculty start managing a grant that they be given a check list where they indicate that they do or do not know this particular list of rules and regulations or procedures so they are not held accountable until they indicate that they do understand them or they have been given an opportunity to receive training. Mr. Potami responded that training is a large component of the Grants Management Project. Professor Brenner added that all of the research policies will be on a Web Server. Part of the training is to rely more on information provided electronically.

Professor Goldman turned the meeting over to Mark Rotenberg and Mark Bohnhorst, General Counsel, to discuss the issues relating to legal responsibilities in the conduct of research and the advising of graduate students. Mr. Rotenberg distributed materials that describe the University's obligation under Regents policy to come to the defense and indemnify individual University faculty and employees when civil and/or criminal claims, administrative proceeding with various federal regulatory agencies such as FDA, NIH and others come about.

Mr. Rotenberg walked the group through the Regents' Policy on Indemnification and Defense of Employees. He pointed out that the policy is extremely broad in that it provides that any individual who can be fairly described as an employee, including people who don't get paid by the University, is entitled to defense and indemnification. It is also broad in terms of proceeding that person may find themselves in.

Are students considered to be internal to the University, it was asked? Not necessarily, responded Mr. Rotenberg. If a student is working here and is accused of wrong doing by another student or third party (outsider), of negligence, defaming, etc., and is filed in court or in any other administrative setting the student could be eligible for defense and indemnification. The mere fact that a person is a student does not otherwise qualify the person to have their lawyer's fees paid.

Mr. Rotenberg directed the attention of the group to the document titled Statement of Eligibility. This form is an embodiment of the criteria outlined in the Regents' Policy. Persons qualified to have their defense provided by University Counsel are asked to sign off on the statement.

The underlining policy rationale include: 1) the principle that the University owes its members a defense--that the University should stand behind people who work with and are part of the University community when accused by outside agencies, individuals and companies or by one another; 2) the University must be sensitive to public perception and the reality that there is not a willingness (by the University) to pay to defend criminal, immoral, wrongful behavior at taxpayer expense. These are the primary reasons why the President has been instructed by the Board of Regents to carefully consider the criteria when authorizing a defense.

One member inquired about defending whistleblowers. Mr. Rotenberg responded that the law of the State of Minnesota and the policy of the Board of Regents is to encourage whistleblowing as a means of ferreting out wrong doing. It does not matter if one is a graduate student, undergraduate, or a Regents' Professor, if you believe there is wrongdoing in our community then you can make an allegation. The whistleblower will be protected against retaliation. He pointed out that not every whistleblower's allegations are deemed to be true after investigation.

Professor Brenner commented that our institution may want to have an explicit policy on whistleblowing. Currently we have a generalized statement.

What about the issue of the interaction of faculty with graduate students, queried one member. There is a dual role in that the faculty member in his or her role as a principle investigator could be a supervisor in the sense of employment on one hand and on the other hand there is a relationship of scientific collaborator and academic colleague--that is an issue of voluntary association. One could envision a situation where the two are in conflict. How does the University deal with that kind of situation? Not knowing all of the implications of the questions being asked, Mr. Rotenberg stated that he would not be able to provide a definitive answer. Noting that, he responded that there is a presumption in the law and in the General Counsel's Office of administrative regularity--that people who are vested with authority to do things are doing them correctly. If the question is related to a scenario where a faculty member has authority to employ graduate students on a grant and determines that person is not performing appropriately on the grant and wants to remove the person from the work on the grant--as long as the PI is not removing the person for an unlawful reason (sex, age, race, etc.), the University would defend that action. The administration is in no position to second guess an academic or scientific judgement of a PI that a grant has to be administered a certain way with certain personnel.

Hearing no further questions, Professor Goldman thanked Rotenberg and Bohnhorst for their presentation.

Hazardous Waste

Professor Goldman turned to Fay Thompson, Director of Environmental Health and Safety to discuss the issue of hazardous materials used in conducting research. In addition to understanding the aspects of using hazardous materials, researchers need to understand that as a PI they are responsible for the safety of those who work with them. Regulatory activity in the environmental, health and safety area has increased dramatically in the past few years, to the extent that there are now at least 70 federal, state and local laws, regulations, codes and ordinances that are of concern to the University of Minnesota. Even more recently, the tendency to strictly apply these regulations to research activities is increasing. Relative to fines and criminal penalties, there has been a very large escalation of regulatory enforcement against academic institutions often resulting in significant fines. Stanford University was recently cited for a large number of relatively minor hazardous waste violations; the proposed fine was almost \$1 million. University of Minnesota policy is that payment of a fine will be born by the department that receives it.

Dr. Thompson walked the committee through the general regulatory requirements. These include:

- Documented training

- Record retention
- Labeling
- Incident reporting

The great variety of detailed and highly specific regulatory requirements are divided into four categories: chemical, radioactive, biohazardous and physical. Dr. Thompson distributed summaries of these requirements. She noted that the summaries will not provide adequate detail to insure compliance. There is a significant level of responsibility, she added. Training is paramount. The PI is ultimately responsible for making sure his or her students and staff are properly trained in the management of waste chemicals and that wastes are indeed being properly managed in the PI's areas of control.

Responsibility Centered Management

David Berg, Management Planning and Information Services, spoke to the committee about responsibility centered management (RCM). Mr. Berg provided an overview of a draft paper that will be presented to the public sometime over the summer. As resources have become thinner and thinner from states and federal government, the first reaction from universities is to look around and take the low hanging fruit and cut the things that are obviously irresponsible, inefficient and tighten up the nuts and bolts, he said. This used to work when these things were cyclical and figured that in a year or two the state would be healthier and when the federal government was not concerned with running deficits and would eventually increase its appropriations, largely for student aid--it was possible to react that way. In the second phase people began to realize we were not looking at a cyclical phenomenon but a whole way in which governments look at higher education as a function and a violently increased competition for public money, people said "we have to take this more seriously." This resulted in the "second phase," which is the cutting phase. If we can't support what we now have, let's quit doing some of what we're doing and support it with the same money. There is a fatal flaw in that, he said, which is that people do not pay you for what you don't do. They pay you for what you do do. When you get to the point of balancing the budget by cutting, and once you get done with cutting the stuff that nobody is supporting anyway, you don't improve your situation by cutting, you make it worse, he continued. We are at the point now where the cutting phase is not doing any more. We have to look at how we get the creativity of the University to be released to provide products that people are willing to pay for--both on the instructional side and on the research and service side. Responsibility Centered Management is an attempt to do exactly that. To bring the goals, the purposes, the goods and the satisfaction of the individual and the unit into conformist with the goals of the institution as a whole.

RCM is not a new concept. Several institutions have been doing this since 1973. Next year, the University of Michigan will be going into the first year of RCM system. The University of Minnesota will utilize Michigan's model in determining its own.

The President has established two committees: a policy oversight committee and a working consultative committee (to be formed). Eight work groups will be formed over the summer to consider the major areas that need to be talked about and propose resolutions relative to how RCM would work at the University. A proposal is expected to be brought forward next academic year (October). Mr. Berg said at that time the administration will seek consultation and will talk about making the actual transition. The transition would occur July 1, 1996. In the first year the transition would be revenue neutral--not necessarily results neutral and not propose to change the ratios in which the state subsidy is now used, Mr. Berg said. The second year, starting July 1, 1997, would be a transition to the full system. The

system will address the inconsistency we now have in the collection of indirect cost from non-federal agencies, Professor Brenner pointed out.

Mr. Berg added that we have to be sure that the accounting system that underlies this allows the indirect cost study to be done. This is not quite as hard as making sure that the result will allow them to do a total allocation within the budget and expenditure system and still allow them to report financial accounting data in a format acceptable to the AICPA and to national accounting standards. Presumably the CUFS system will allow them to do this.

A student member inquired about student participation on the working groups. Her concern is that if students are brought in at the later phase they will not understand the historical aspect and is difficult to be a contributor at the late phase. She also encouraged the participation of students in discussion relative to curriculum.

Where do you find the advocates to protect the interests of interdisciplinary programs which are not necessarily represented in the base Responsibility Centers, it was asked? Mr. Berg responded that this was being discussed in the working group dealing largely with curriculum.

Members spent some additional time discussing the issue and thanked Mr. Berg for his presentation.

Workload Addendum

Professor Goldman deferred this item to Professor Klinger. The issue relative to the workload addendum is to make sure that the addendum is a working part of the policy that is enforced and used as a reference guide with respect to actual unit workloads. This will require oversight and it cannot be assumed will be automatically carried into the activities and planning of individual units. Professor Klinger suggested that the committee request of the administration its plans for enforcing the policy and perhaps request an annual report on the implementation of the policy.

Professor Brenner suggested that the committee may want to consider re-passing the resolution to say that as the administration is considering accepting this motion passed by the Senate it would be helpful to know how they are going to implement it.

Professor Goldman suggested the committee make an inquiry regarding the workload addendum. It was further suggested that a communication go to John Adams about the acceptance of the workload addendum and how it should be enforced. Professor Goldman indicated that he would write the letter.

Hearing no further discussion, Professor Goldman thanked committee members and adjourned the meeting.

-Vickie Courtney

University of Minnesota