

Minutes*

**Senate Research Committee
Monday, February 23, 2004
1:15 - 3:00
238A Morrill Hall**

- Present: Gary Balas (chair), Dianne Bartels, Darryn Beckstrom, Victor Bloomfield, Christopher Cramer, Dan Dahlberg, Sharon Danes, Robin Dittman, Kathy Ensrud, Steven Gantt, David Hamilton, Michael Hughey, Paul Johnson, James Luby, Mark Paller, Maria Sera, Charles Spetland, George Trachte, Barbara VanDrasek, Jean Witson
- Absent: Kathleen Conklin, James Cotter, Katherine Klink, Andrew Koch, Phillip Larsen, James Orf, Virginia Seybold, Thomas Schumacher, Michael Volna
- Guests: John Engelen (Director of Federal Relations); Mark Bohnhorst (Office of the General Counsel), Winnifred Schumi (Oversight Analysis and Reporting), Ed Wink (Sponsored Projects Administration)
- Other: none

[In these minutes: (1) federal research issues (the federal budget and agency funding, the role of politics in funding grants, Higher Education Act reauthorization, compilation of University-federal relationships); (2) statement on University research (stem cell research); (3) update on research secrecy issues (and restrictions on research); (4) policy on the use of royalty money]

1. Federal Research Issues

Professor Balas convened the meeting at 1:15 and welcomed Mr. John Engelen, the University's federal lobbyist, to provide an update to the Committee on federal issues.

Mr. Engelen said he would itemize the "headline" issues that will come before the new Congress.

Budget issues will be significant. The president (Bush) submits his budget to Congress, the House and Senate adopt a budget resolution and then must pass 14 appropriations bills by October 1. That deadline has not been met in recent years. The president's proposed budget has a deficit of \$521 billion, which will frame the debate; it is already under bipartisan attack. Some believe it spends too much, some believe there are too many tax cuts.

The budget contains increases in research for security but only small increases in a few other places. NIH is proposed to increase 2.7% (and there will be smaller grants). NSF is proposed to receive a 3% increase. The Department of Energy and Department of Defense research budgets are cut. Homeland Security university research budgets are cut by 60%. There are significant issues for the University, and the deficit makes it unlikely the numbers will be increased. In the humanities, however, the National

* 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.

Endowment for the Arts and the National Endowment for the Humanities do quite well in the proposed budget.

Mr. Engelen thought it unlikely Congress would finish the budget and appropriations before the election. For Congress, there are only 70 working days before the election. In addition, in tough budget times, there will be a lot of attention to spending accountability, conflict of interest in NIH, politics in science, and whether money is spent wisely. There is also an expectation of results; the NIH budget has doubled in the last five years and Congress will ask about the results.

A public letter decrying the role of politics in science was recently sent to the Congress; two of those who signed it are from the University of Minnesota. Mr. Engelen recalled that he had spoken before about an amendment offered by Rep. Pat Toomey of Pennsylvania to the Labor/Health and Human Services appropriations bill which would have prohibited funding for five specific research grants by (NIH) which had all been approved for funding by the peer review process; the amendment was defeated 212 to 210. There was a hearing on the amendment; the five proposals were from a hit list of 150 that came from an outside group; there were four projects of the 150 at the University of Minnesota. Principal investigators received calls about what they were doing; there were questions raised about de-funding projects and about the origins of the list. The chain of events started and continues. The list was mostly of projects related to HIV/AIDS research, some of which had provocative titles. The Director of NIH said in January that NIH supports the grantees and that they were funded competitively. The University stands behind the four researchers here and has communicated its views to the Minnesota Congressional delegation. His challenge, Mr. Engelen related, is to communicate the University's views and to count votes in Congress. He said he has talked with people who support the competitive review process but who supported the amendment because none of the four projects were in their state. "We must also convey the message" that people must support the competitive funding process even if the projects are not in their states. He said he hoped that the issue would not come up in legislation, but it has drawn a lot of attention and he will track it.

Visas for students continue to be a serious problem both here and nationally, Mr. Engelen said. The national associations have surveyed the schools; there are problems at every university. In Minnesota's case, the acute problem is with China. Some members of Congress have asked for an audit of State Department policies; the National Academy of Science has set up a process so it can act as an ombuds office between institutions and the State Department.

It is clear that a significant number of students are not able to return to the U.S. Applications from foreign students are down; Mr. Engelen said he has been told that the number of students taking admissions tests for American universities has dropped 20-30%. They are working hard to get the process straightened out.

Congress may try to reauthorize NIH, which could open a Pandora's box of issues. There will be hearings and forums for difficult issues.

Although not specifically related to research, Congress must also reauthorize the Higher Education Act, which will include proposals on tuition controls and the cost of college, accountability for students, graduation rates, and so on.

What are the University's priorities, Professor Balas asked? What is he focusing on? And what can this Committee do to help? Mr. Engelen said that for the first time in the history of the University, the administration has compiled an inventory of federal issues of concern and put them into a volume entitled the Gold Book (which is a massive volume). They have asked the colleges and departments to think about federal issues. The University's relationships with the federal government will now be in one place and will measure the breadth of the relationship as well as permit planning around these issues. This is a big university with a small Congressional delegation; the University could overwhelm its Congressional representatives so it must be thoughtful about when it will go to Congress about issues. Copies of the Gold Book will be provided to the Congressional delegation so they can see what is important to the University and if what they are doing has an impact on the University. It will be an important document.

Who sets the priorities on how he spends his time, Professor Dahlberg asked? There is no formula, Mr. Engelen said. There is a process and various factors that play into it. Is it something that will happen this year or can it wait? How serious would the impact on the University be? And the University does not set priorities for earmarks, which it needs to think about. With the Gold Book it will be easier to review issues and set priorities. Who decides these things, Professor Dahlberg asked? Vice President Hamilton said that Mr. Engelen is the University's detective in Washington; he finds out things and reports to the University's senior administrators and they then tell him what to do. The Higher Education Reauthorization Act, for example, is very important, as are several other things, but Mr. Engelen is only one person (although in the process of hiring a second individual, it will take time to train the person). Mr. Engelen said that he talks with groups from the St. Paul campus, from the Academic Health Center, and so on; it is a consultative process, he said.

Dean Bloomfield said, apropos the visa problem and the National Academy of Science role, that it has been his impression that the State Department was unresponsive to external pressures. Is that changing? It is, Mr. Engelen said, because it is receiving pressure from Congress (including Representatives Sabo and McCollum from Minnesota). The pressure is coming from every state. If the State Department were smart, he said, it would admit that this is a resource issue and it would seek funding. These are not legal problems, they are process problems. This is a bureaucratic/resource issue, Mr. Engelen concluded.

Professor Dahlberg asked what percent of his time Mr. Engelen spent at the University and in Washington. He spends about 60% of his time in Washington, Mr. Engelen said.

There are many issues that have an impact on all universities, Professor Dahlberg observed; do the lobbyists work together? They do, Mr. Engelen said. Federal relations officers from the large national associations that represent many institutions meet monthly; the Big Ten lobbyists meet once per month and are doing more because of the raw political power of the states they represent. The University can have an influence on the Minnesota delegation, but the way to have influence is to work with peer institutions and to try to ensure that the Minnesota delegation will help the joint effort.

Professor Balas asked if the Gold Book would be used to help get faculty involved. Mr. Engelen said is one focus. The University must become more strategic and focused so it can send the right message at the right time. The best thing the University has going for it is examples of what it does (many people outside the University do not realize what goes on here). The question is how to translate federal dollars into what happens at the University--what does it do with the money? All members of the

Congressional delegation have visited the University at least twice in the last year, and there have been a lot of staff visits.

Professor Balas asked Mr. Engelen what the odds are that there will be a law on tuition caps, which would have a potentially devastating impact. Mr. Engelen said the problem is that the people in Washington have lost sight of the role of public universities and their relationships with state legislatures. He said he did not believe there would be cost-control legislation, although there will be a lot of rhetoric, and perhaps there will be ways for consumers to compare prices and information (probably on the web). It could be sort of a "No Child Left Behind" model, Mr. Engelen surmised.

Professor Balas thanked Mr. Engelen for joining the meeting.

2. Statement on University Research

Professor Balas distributed copies of a draft statement on University research forwarded by the Faculty Consultative Committee (FCC) for the consideration of this Committee. It is a response to legislative proposals to take money away from the University if it decides to permit embryonic stem cell research. His understanding from the last FCC meeting is that the proponents of this legislation can affect the University's appropriations; there will also be legislation introduced proposing that the University be allowed to conduct such research and that state funds should be provided. The draft statement read as follows:

STATEMENT ON UNIVERSITY RESEARCH

The [Faculty Consultative Committee][and][the Senate Research Committee] of the University of Minnesota Faculty Senate urge the members of the 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 the research directions the faculty choose. We are deeply troubled by the possibility that the state legislature, or any other political body, might dictate what topics the faculty of the University should pursue in their research. We fear that other research topics could fall under the political microscope.

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 long discussion and a great deal of thought, including careful review by the appropriate faculty committees.

We concur with the briefing provided to the Board of Regents: "A public university such as the University of Minnesota is precisely the place where research such as this should take place. In fact, there is no more appropriate location for discussion and debate--even argument--around tough ethical, legal, medical, and policy issues than a public university. Precisely because we are a public institution, dedicated to the free and open pursuit of ideas, is the reason this research should take place here." There are approximately 1,000 researchers 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.

Research at the University is driven by the faculty. Appropriate policies have been put in place to ensure that this research is conducted with care and without the use of public funds. As Senior Vice President Cerra has said, "As long as that research is legal, which this is, is regulated, which this is, has the necessary approvals, which if we ever do this kind of research, they will have, and it's an area of faculty interest, and the institution has the equipment and space to support it, we do the research. That's the way it's always been, and then we're publicly accountable for the research we do."

The scariest part of all this is that the state legislature will decide what research the University can and cannot do, Professor Balas said. This matter is related to the abortion discussion, but the higher-level concern is that if the state can decide the research to be conducted, this university is headed for disaster. Anyone on the cutting edge of research--smoking, Department of Defense, stem cells, etc.--will leave the University.

Committee members spent some time deliberating the wording of the statement. A number of points were made:

-- Stem cell research should be done; the statement is not strong enough. It also assumes the University would capitulate to the legislature; the University should say it will take the cut and raise tuition, and as a result turn away hundreds of students.

-- The statement should focus more on academic freedom and less on embryonic stem cell research specifically.

-- The University should not hide behind academic freedom; this legislative proposal is "just plain wrong"; wiser heads have argued that no matter the subject matter, it will be devastating if the state tells the University what research can and cannot be done.

-- The statement should be stronger about academic freedom and should include other issues mentioned at the FCC meeting, such as who can be hired and what can be taught in the classroom. The issue IS academic freedom.

-- Is Minnesota the only state facing this issue? It is not; New Jersey and California are moving forward on providing funds for stem cell research, as is Massachusetts. Would it help to draw on those examples? The point is that the legislature should not be saying yes or no to research.

-- The issue should not be politicized; the statement should emphasize that the University has systems in place to make decisions.

-- There should be a strong articulation of academic freedom not linked specifically to embryonic stem cell research. It should also speak about what a university brings to a society.

-- This draft tells the legislature to mind its own business and keep sending the money and will not persuade anyone. There should be a stronger emphasis on the role of a university. It should also be noted that the way the legislature influences the University is through its selection of Regents, not by making decisions about specific programs.

- The case of Galileo needs to be recalled.
- The statement should not include quotes from other sources but instead should be a faculty statement.
- The state will certainly use the results of stem cell research to save lives; what the proposed legislation says is that those treatments and cures will not be invented in Minnesota.

The Committee voted unanimously to support the concept of academic freedom and a statement that there should not be regulatory controls imposed on selection of research. Professor Balas said he would try to reword the statement to conform to the sentiments expressed at the meeting. The statement adopted by the Committee 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 who drive 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.

Adopted unanimously February 25, 2004

Endorsed unanimously by the Faculty Consultative Committee February 26, 2004

3. Update on Research Secrecy Issues

Professor Balas turned next to Messrs. Bohnhorst and Wink to provide the Committee with an update on research secrecy issues.

Mr. Bohnhorst said they would provide an update on the problems the University does or might confront with respect to publication restrictions, export controls, or restrictions on graduate students working in certain areas of research. He distributed copies of a redacted letter that had been sent to a University of Minnesota faculty member inviting participation in a research project; the letter had come from a faculty member at another university who held the grant. This is what would have been required had the faculty member consented (the following bullets from the letter are direct quotes):

-- Publication: One copy of each paper or thesis planned for publication of research resulting from this project must be submitted for approval to _____ and the Department of the Air Force prior to submission for publication. Any technical data falling under the ITAR restriction included in the document must be removed before publication. Publication restrictions are found under DFAR clause 252.204-7000, Disclosure of Information.

-- Research Staff: Only U. S. citizens may participate in this project. No foreign nationals may participate in the research or have access to the research data being developed.

-- Graduate Thesis: Any graduate student fulfilling their thesis research requirement with results from this project must be a U. S. citizen. In addition, their thesis defense must be presented to a panel of only U. S. citizens. Publication of the thesis should follow the guidelines above for publication.

-- Access to Stored Information: Foreign nationals may not have access to stored information on this project through computer networks and other electronic media. This includes computer and network support staff that have access to stored data.

-- Classified Results: If any notification is received from the sponsor that any part of the research must be classified, please contact me immediately so we can take the required steps to secure the classified data.

The Minnesota faculty member who received the invitation to participate in the research turned it down; he said he did not want to be a part of it. The project would have been about 1/3 of a million

dollars, which represents the biggest research funding loss to the University due to its policy barring restrictions on research. What this letter demonstrates, however, Mr. Bohnhorst told the Committee, is that some universities around the country are accepting restrictions that the University of Minnesota has diligently turned down.

He and Mr. Wink are part of a "troublesome clauses" group of about 20 individuals from a number of universities, organized by the AAU. A few of the universities represented accept restrictive clauses; most do not. If a university accepts them, the language above is an example of what the institution must do internally and what any collaborators in the research must also do.

For the most part the University's policy has not damaged research here, Mr. Bohnhorst said. This was the biggest loss; there was one other smaller project, about \$40,000, that was lost because the University could not reach the appropriate government person in time to negotiate the restrictive clauses. Thus the problems continue but there have not been major losses at the University.

When an institution accepts publication restrictions, the research is not in the public domain and the ITAR (International Trafficking in Arms Regulations) controls or other export controls may apply. The offices of the inspectors general of the Department of Defense, of State, and of Commerce visited a series of research university to try to find out how they are handling export controls (ITAR) for a report to Congress. So there will be a report on this issue in the future.

The agreement provided to the Committee was tied to ITAR, Dean Bloomfield observed. It is likely the University will see the same restrictions in bioterrorism research, areas where one could see there might be large amounts of money for which University researchers would want to compete? Homeland Security is new to the granting business, Mr. Wink explained, and university officials have tried to indicate what it will mean to universities if they include such language in contracts. But bioterrorism research is an area they would probably like to put a lot of restrictions on. There have been a series of meetings with universities that Minnesota has attended, Vice President Hamilton said; Homeland Security seems not to understand what it is getting into and it is still unclear if they will do things in a way that will be workable for this university.

There are still only a small number of contracts at the University that propose publication or other restrictions, Professor Balas asked? There are, Mr. Bohnhorst said--the number is small but fairly constant.

If the University of Minnesota faculty member had agreed with the restrictions contained in the letter, would the University have agreed, Professor Dahlberg asked? Only if this Committee had approved, and the Senate had confirmed the Committee's view to the President for his signature, Mr. Bohnhorst said.

If the University of Minnesota faculty member had agreed with the restrictions contained in the letter, would the University have agreed, Professor Dahlberg asked? Only if this Committee had approved, and the Senate had confirmed the Committee's view to the President for his signature, Mr. Bohnhorst said.

Professor Dahlberg and Mr. Bohnhorst then discussed export control problems arising from company sponsored research. Confidential information from companies used in research is not in the

public domain and may be subject to export controls--hence, restrictions on use by foreign researchers may apply. Mr. Bohnhorst pointed out that US researchers who receive export controlled confidential information and then share it with foreign students could be subject to severe penalties if they acted willfully. Professor Dahlberg asked about contracts with foreign companies; Mr. Bohnhorst indicated that US export laws only relate to US technology and would not apply to, for example, confidential Japanese technology disclosed by a Japanese company. If the content of the technology is non-US, and if the University retains the right to publish all its results, there is not an export control problem.

Professor Dahlberg raised a concern about information that might be in a final report to the company, but not included in a publication. If it's not published, couldn't the government say this particular piece of information is sensitive and subject to export controls? Mr. Bohnhorst indicated that the "fundamental research" safe harbor that universities rely upon is phrased in broad terms--if the university retains the right to publish the information, if the information is of the type normally published and shared broadly within the scientific community and there are no restrictions on the right to publish, then the fact that a particular detail was not actually included in a publication should not be a problem.

Mr. Wink also reported that the University has had projects from the Department of Justice involving outreach and public service; the DOJ wanted to review all output (reports, etc.) developed for a web site. They talked to the program officer; once the review was completed, the University could publish anything it wished. This was a contract to prepare a web site program, in the public service arena; the chances of anything being prepared for publication were quite small. Must the DOJ approve the web site, Professor Balas asked? They must; it is their product, their tool, Mr. Wink said. The work would not be on a University web site. This was work for hire that they wanted to check on, Professor Balas commented.

In general, it sounds like there are few problems vis-à-vis the number of research grants that the University is awarded, Professor Balas commented. Mr. Bohnhorst agreed. Some universities in the "troublesome clauses" group are seeing more problems than Minnesota; the University has also managed to get the troublesome language removed from a number of grants. It takes a long time to get the language removed, Mr. Wink said, especially if the prime contractor (e.g., another university) must also be persuaded. The government takes the position that if someone is doing fundamental--basic--research, there should not be restrictions on it. The University believes it is doing basic research, but some agencies are still imposing restrictions; the University must deliver the message to the Office of Science and Technology that this needs to stop. To what extent is this a problem with individuals rather than agencies, Dr. Hamilton asked? In some cases, it is individuals, Mr. Wink said, but the Department of Defense puts in restrictions more often than other agencies; it seems to be part of their mindset.

Professor Balas thanked Mr. Bohnhorst and Mr. Wink for their comments.

4. Policy on the Use of Royalty Money

Vice President Hamilton reported on the presentation of the proposed policy to the Board of Regents. It was presented twice, he said, once to a Board committee and then to the Board; Board members raised questions similar to those raised at Senate committee meetings. The Board asked for the pros and cons of restricting the funding to tax-exempt, non-profit organizations, which they will be provided at the March Board meeting. The administration continues to believe that restriction is appropriate and desirable.

The President has appointed the oversight group for the royalty policy, Dr. Hamilton reported. It will include Professors Balas and Campbell (chair of the Finance and Planning Committee) as well as Dr. Paller from the Academic Health Center, Dr. Sullivan from the Provost's office, and Vice President Pfutzenreuter. The Board of Regents will not act on the creation of the advisory committee but it knows of it and is comfortable with it.

Professor Balas thanked Dr. Hamilton for the report and adjourned the meeting at 2:45.

-- Gary Engstrand

University of Minnesota