

Minutes*

**Senate Research Committee
Monday, October 16, 2000
1:30 - 3:00
The Morrill Room, Morrill Hall**

Present: David Hamilton (chair), Melissa Anderson, Victor Bloomfield, Daniel Brewer, Robin Dittman, Esam El-Fakahany, Jerry Flattum, Leonard Kuhi, Scott McConnell, Richard Poppele, Barbara Van Drasek

Regrets: Eric Klinger, Mark Paller, Sharon Neet, Linda Zinter

Absent: Phillip Larsen

Guests: Vice President Christine Maziar

[In these minutes: direct and facilities/administrative costs; director of research compliance position; pre-awards; University-industry relationships ("The Kept University")]

1. Charging of Direct and Facilities and Administrative Costs

Professor Hamilton convened the meeting at 1:35 and reported that Vice President Maziar wished to discuss the Director of Research Compliance position; pending her arrival, the Committee would discuss the direct and indirect cost policy revisions.

Mr. Wink told the Committee that this policy was one of the last to be brought to the group as a part of the NIH corrective actions plan; it had been delayed because of uncertainties about the audit status of our Cost Accounting Standards submission to the federal government. Of 143 institutions which have prepared similar submissions, the University is one of 25 whose policy on classification of costs has been approved. He reviewed briefly the policy revisions, none of which were seen as major changes but were rather clarifications.

After the discussion of the Research Compliance position the Committee returned to the topic of direct and indirect costs. Professor Kuhi said he had two questions about indirect costs. There is a lot of concern about charges for computer connections or nodes. They are charged as indirect costs but individual researchers must pay for them but do not have enough money; how will these policies affect that problem?

This document squares University policies on direct and indirect costs but does NOT address who pays them, Professor McConnell observed. Professor Hamilton reported that since 1997 Senior Vice President Cerra paid \$400,000 to support the new BSBE building; he recently had to give up that support so the dean's office was to pay the costs. The dean's office passed the costs to the departments. This is counterproductive to research to impose these huge charges on departments.

* 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 represent the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.

Dr. Maziar pointed out that the A21 guidelines prohibit charging these costs to a research contract. No sponsor pays for the full administrative costs of a grant--those costs are capped at 26%--and the University can document an additional 5% in costs associated with the research enterprise. As a result, the gap must be covered by other funds (O&M, tuition, endowment). Administrators must make decisions about how to allocate central, collegiate, and departmental funds to cover these kinds of expenses. As the research enterprise gets larger, the gap in funding also increases, and it is difficult to tell the legislature the University does not have enough money to pay research expenses and ask for money for that purpose. Programs that have seen a rapid increase in research funding have faced the most stress in covering indirect cost obligations.

Dr. Maziar suggested reading a Rand report on indirect costs commissioned by the President's Office of Science and Technology Policy that was required by Congress. Congress was apparently under the impression that it was overpaying for indirect costs and wanted data that just justify reducing the rates. Instead, the report shows that even when the federal government pays the full rate negotiated institutions are still shorted on funding.

One can charge long-distance telephone calls and FedEx charges as direct costs, Professor Hamilton pointed out; why not Internet costs? Because long-distance and FedEx charges can easily be demonstrated to be attributable to a project; that is more difficult with an Internet connection. But one knows that (for example, 42%) of Professor X's effort goes to research so it is possible to back up the charges, Professor McConnell responded. That is not indicative of the amount of traffic on a connection, Mr. Wink said. This all represents faulty thinking, Professor Hamilton maintained, which is the same reason why one cannot buy a computer on a research grant, which does not make sense. Dr. Maziar agreed that the University should review its interpretations of allowable expenses, that it has perhaps been too conservative, but the issue goes beyond individual mis-allocation.

The policy cleans up how to allocate costs to funding pools, Professor McConnell observed, but it may make worse the question of how to get funds to pay those costs. This is a quandary; the Committee is being asked to approve a policy that does not resolve the problems. Dr. Maziar said that for technology as pervasive as the Internet it is treated as a utility, similar to providing electricity to a lab. Internet technology was a new cost and sprang up quickly without central allocations or funds to support it. This is part of the struggle that takes place when new funds come to the University; how does the institution support central services? When the Internet first arose it did not benefit all parts of the campus. Now it is used by everyone who uses electricity. Perhaps there is need for a different model for funding central services, she reflected.

Professor Hamilton observed that Associate Vice President Pfitzenreuter has spoken of the notion of common goods and has moved some expenses to central funds. This is an area where the faculty could begin discussions with him; is the Internet a common good? One must understand the consequences of moving items to the category of common goods, Dr. Maziar counseled; paying for something centrally means there are fewer dollars available to allocate to colleges and departments. Moreover, there may be some things that are not common goods initially but that become so later.

His other question, Professor Kuhi said, has to do with uncollectible debts; the last proposal was that departments would have to pay them. Some departments will not want to pay for faculty transgressions. How was the issue resolved? This is an issue with the Controller's Office, Professor

Hamilton said, and this Committee should have an annual meeting with the Controller. Professor Kuhl's question was not answered.

Some are talking about migration to leasing software via the web, Mr. Flattum observed. Is that related to indirect costs, Dr. Maziar asked? Even if one leases applications from Microsoft, Professor Hamilton said, one still needs Internet access. He agreed with Dr. Maziar that there should be discussion about moving costs from indirect to direct.

2. Director of Research Compliance

Vice President Maziar joined the meeting; Professor Hamilton asked her to put in context the position of Director of Research Compliance and explain why it is needed.

Dr. Maziar said that to put it bluntly, the federal government expects that universities with large health care activities will have a senior individual identified with responsibility for research compliance and that that individual will have access to the highest levels of the administration.

The position is often called the research compliance officer. Dr. Maziar said she was uncomfortable with that title. She and many faculty believe a more appropriate title at the more comprehensive institutions is Director of Research Compliance. As the Committee knows, she said, the University has been working diligently to build compliance programs on the operational side (such as the Office of Oversight, Analysis, and Reporting, the Research Subjects Protection Program, etc.) as well as created extensive education and training programs.

There is also need for an individual outside compliance operations with the responsibility of assuring the President and Board of Regents that compliance activities are "up to snuff": that they meet federal regulations and serve the University's publics.

The position of Research Compliance Director COMPLEMENTS operating activities in research compliance, Dr. Maziar said; it does not duplicate them. An early conception of the office called for the individual to report to her, she recalled, but she had objected because such a relationship created an internal conflict of interest: she is the chief ADVOCATE for research, she pointed out, and she was concerned that for the individual to report to her would create a conflict of interest or the appearance of a conflict. Because the operating research compliance programs report to her, however, the position will be HOUSED in her office in order to avoid duplication of effort and funding and so it can draw support from units that report to her office. The individual will REPORT to the President through the Academic Vice Presidents Committee (which consists of Executive Vice President Bruininks, Senior Vice President Cerra, Vice President Muscoplat, and herself). The Director has full and direct access to the President, Dr. Maziar said, and the academic vice presidents can provide support and oversight for him or her.

Many of the operating pieces of research compliance have been put in place over the last four years, Professor Hamilton observed, and they do work, very effectively. Dr. Maziar agreed and pointed out that the compliance activities of the University are requiring more and more money each year because of increased expectations on the part of the federal government. She said one can be sure that each time federal research spending increases there will be increased expectations on the compliance side as well. She said she did not expect that trajectory or slope to change very much in the near future. Another reason to have the position of Director of Research Compliance, beyond the operational elements, is so

that individual—on funds independent of research—can advise the President about any need to adjust resources in compliance functions at the University.

The compliance plan was presented to this Committee and to the Faculty Consultative Committee last year, Professor Hamilton noted; FCC wanted to be CERTAIN that the faculty had a voice in the creation of the Director of Research Compliance position. This discussion is part of that FCC request; the position will also go to FCC for review. He also pointed out that the position description includes a charge to the individual to work with faculty governance in the review and formulation of policy, procedures, and guidelines.

Will the individual be responsible for initiating new programs in order to improve compliance or will the Director only review existing programs, asked Associate Dean El-Fakahany? There are not funds to establish new programs, Dr. Maziar said, but the Director could identify needs or deficiencies in compliance functions and make recommendations to address them; after that the normal training programs would have responsibility.

This is not intended to be a large office, Professor Hamilton said; it would have perhaps one or two support personnel. Dr. Maziar said that there is an inexact analogy with audits in that people who have worked with the internal auditing staff find their reviews helpful because they catch little problems before they become big problems and can guide a unit in responding to the problems. The same is true for the office of research compliance.

What will this person do, Professor McConnell asked? How will he or she spend time? Review reports? Some of the job will be keeping up with changes in state and federal regulations, Dr. Maziar agreed, and being sure University policies are aligned with them. One assumes that Sponsored Projects Administration and the Internal Review Board would do that, Professor McConnell responded; would the Director of Research Compliance make sure they are doing their job? That would be part of the responsibility, Dr. Maziar said, as well as being sure that the parts work well together and support each other. Would the person make proposals across the University, review activities, review department audits, or all of this? All as the need dictates, Dr. Maziar said. She said she does not see any looming problem right now and the person can deal with "fire drills" on compliance.

Is the Director of Research Compliance the person to whom whistleblowers would speak Professor McConnell then asked? It could be, Dr. Maziar said; a whistleblower could speak to someone at the local unit level, to someone in auditing, or to the Director of Research Compliance.

Another responsibility of the Director will be to ensure that problems identified by an audit, by Office of Oversight, Analysis, and Reporting are followed up, Professor Hamilton said. Like any new office, the appointee will have to identify the things that must be done. The individual will also be involved in policy development, Dr. Maziar noted.

What is important from his perspective, Professor Hamilton told his colleagues, is that the individual have a solid background in institutions like the University of Minnesota; he would not favor hiring someone with had no experience in an academic setting. Someone coming without that experience might not understand that one can achieve compliance without exerting police powers.

Professor Kuhi asked how things would have been different in the ALG/Najarian case if the position of Director of Research Compliance had existed then. Dr. Maziar said one person will not change the University. But creation of the position communicates to the federal government, the public, and to faculty and staff that the University embraces a culture of compliance; it says the University wants to know what the rules are and is willing to play by them. The August, 1995, letter from NIH described the University as an institution with pervasive non-compliance. Not only was there no Director of Compliance in 1995, Professor Hamilton pointed out, there was no audit group headed by Gail Klatt (which is the envy of most institutions in the Big Ten) and there was no Office of Oversight, Analysis, and Reporting. Had the University had those two organizations plus a Director of Research Compliance, it would have discovered and acted on the problem. One can only speculate, Dr. Maziar said, that the University, like other institutions, did not appreciate the cost of non-compliance.

The individual will be an ADVOCATE for compliance, Dr. Maziar said. She does not see the individual as having any enforcement function; that is not in the position description. In egregious cases, presumably the Director could bring in the Office of the General Counsel, but that would be distinct from the individual in the office. The Director reports to the academic vice presidents because it is through them, and the deans, that enforcement takes place.

Is there a distinction between compliance and disclosure, Mr. Flattum asked? There is, Dr. Maziar affirmed. Would the Director be involved in the latter? The Director will keep an eye on the extent to which employees are appropriately disclosing activities to the University and its sponsors. The Director will NOT track each employee but will look at the SYSTEMS that are in place to be sure they work. For example, Professor Hamilton said, with respect to a potential conflict of interest, the Director would have the right to know if a plan to deal with the conflict has been worked out and if not, could ask why not and have an influence on what happens.

Does the Director have oversight for both sponsored and non-sponsored research, Dr. El-Fakahany asked? Yes, said Dr. Maziar; the University has a duty to its publics for both sponsored and non-sponsored research.

The individual selected for the position, Dr. Maziar said, must believe deeply in the mission of a research university, and believe in it so passionately that he or she is willing to spend a career keeping the institution on track. It canNOT be someone who enjoys a police role; it must be someone who wants to HELP faculty and staff and who will be DISAPPOINTED each time a transgression is found.

This is the first time the Committee has seen the position description, Professor Hamilton noted; he said it should make a statement in support of the position description, or not supporting it; if the Committee supports it, he will take it to the Faculty Consultative Committee for additional deliberation. Action could either be at this meeting or in the future. After brief discussion, the Committee agreed without dissent that it supported the position description.

Professor McConnell, supporting the position description, commented that it is necessarily a little vague, as the individual selected must figure out what to do. It presumes a connection with the Vice President for Research office but also feedback to the faculty governance system; how will that occur and what opportunity will there be to participate in discussions? Dr. Maziar said she would expect an annual report to the Senate and to this Committee.

It might be useful to have a revised job description after a year, Professor Poppele suggested. Dr. Maziar said the job description is intended specifically to convey the idea that faculty governance is important and that the University needs it AND that faculty governance cares deeply about compliance and needs to be kept informed.

3. Pre-awards

Professor Hamilton asked Mr. Wink to make a brief report on pre-awards. Mr. Wink explained that this is predominantly an NIH matter but it could bear on a grant from any federal agency with multi-year funding cycles. Sometimes awards are late but the University assumes the PI can continue spending.

The same situation occurs between project periods. One might be at the end of a five-year project, been told the work was good, and that the project will continue to receive funding--but some sponsors start the renewal on July 15 rather than July 1. The agency has said there is pre-award authorization, and saying that implies the University has the authority. The proposal is to change the process to recognize that authority.

If someone is wrong, who is responsible, Professor McConnell inquired? The department, Professor Hamilton said. If there is no statement from the agency that support will be continued, spending does not continue, Mr. Wink said. This authorization means the University need not ask about the two-week gap if the award is to be continued. Professor Hamilton said that there had been a problem with charges to the department that seemed unfair. This change brings the University into line with what the federal government says the University can do.

Professor Hamilton expressed appreciation to Mr. Wink for bringing the issue to the Committee; he said he had thought that this could be an administrative decision.

4. "The Kept University"

Professor Hamilton turned now to the issues raised by "The Kept University" articles from THE ATLANTIC MONTHLY earlier in the year. He first mentioned a paper from Mr. Flattum that had been distributed to the Committee; he said that the points in the paper would more appropriately be raised in connection with future agenda items. "The Kept University" [hereinafter TKU] topic is more about support of the academy by outside agencies. He also asked Mr. Flattum to prepare an executive summary of the paper.

Professor Hamilton then drew the attention of Committee members to a series of questions that Vice Provost Bloomfield had drawn up, at his request, to help with the discussion of TKU. The questions were these:

1. As the higher education enterprise grows because of societal demand, and federal and state support does not follow suit, what recourse do universities have other than to rely on private support (which is likely to come with strings)?
2. If universities choose to reject demands for responsiveness to the private sector, won't they be starved of resources even to support their traditional liberal arts and sciences programs?

3. Should companies be able to negotiate first rights to commercialize research funded by state and federal government agencies, even if they didn't sponsor it, in return for major sponsorship of other research? Are there regulations about this?
4. Should companies have representation on departmental or college research committees?
5. Do institutional funds freed up by private sponsorship, or the ICR generated by private grants, subsidize other parts of the university? Or does the institution subsidize private research, just as it does publicly-funded research, through inadequate ICR recovery?
6. Is there some limit on the proportion of research that any one company should be able to support in a department or college, in return for IP rights?
7. Is there evidence that increased emphasis on patents and licensing is diverting resources from parts of the university that cannot readily generate profitable intellectual property? Or do the revenues from licensing provide additional resource for the core of the university?
8. Should there be strict limits (2-3 months or less) on delay of publication to allow for patenting? What is our current policy, and should it be changed?
9. Should research sponsors have the negotiated right to approve the content of publications? What is our current policy, and should it be changed?
10. Should faculty (or other researchers) be permitted to do research on products or processes in which they have a commercial interest? (Currently we and most other universities allow this with a management plan; MIT and Harvard Med, among others, do not.)
11. Is it valid to imply that sponsorship of research by a corporation is always suspect, while sponsorship by a government agency or non-profit foundation is always above suspicion? Should sponsorship of research always be disclosed upon publication?
12. Is there evidence that the potential share of royalties by departments is leading them to favor faculty and research directions that will produce such royalties?
13. Should universities themselves hold equity in companies that stand to profit from their faculty members' research?
14. Is technology transfer income "unrelated business income" or is it intimately connected to the university's research mission?
15. To what extent are restrictions on use of research tools and supplies, such as material transfer agreements, inhibiting research? If this is a serious issue, what policy changes should universities make?
16. In what proportions is the shrinking of the humanities due to a diversion of university resources to more profitable fields, to decreasing support by society, and to decreasing interest on the part of employment-conscious students?

Dr. Bloomfield said the questions were based on TKU. The articles present a very biased view of the virtues and vices of university-industry relationships. The questions raise difficult issues to think about; not all of them suggest any definite policy that can be written. Some are rhetorical, some are overview, and some could be turned into policy. The latter could be identified and a work product from the discussions could be developed. Some of them are more discussion-prone, Professor Hamilton agreed, and could lead to conclusions.

In the case of (3), for example, Professor Hamilton said, the University has no regulations but companies often want first rights. Mr. Wink said that the Bayh-Dole act encourages academic institutions with federal research funding to commercialize the results. Companies want to negotiate rights or licenses up front; the University takes the position that it is hard to identify the value before the research is conducted. This is a minefield one tries to weave through.

The case described in TKU is different, Dr. Bloomfield said. In that case, just by contributing a lot of money to a department a company had the right of first refusal to ANYTHING that turned up that might be profitable. The University has made no agreement like that. But companies will try anything, Mr. Wink said, and not only want what was developed but also want to reach through and get other technology or developments. The University tries to eliminate such clauses in agreements it signs.

Dr. Bloomfield related that he had distributed the questions to a couple of committees that had outside representatives; one industrial interest thought there was nothing wrong with the arrangements: they are helping out and should be helped out--there is a quid pro quo. Would there be a lot more private funding for research if the University made the kind of offer described in TKU? Professor Poppele said he did not think it a good idea because they would focus the University's activities in a particular direction.

Should there be a limit, suggested by (6), Dr. Bloomfield asked? Plant sciences may be an exception because there are a few large companies that fund most research; they have a lot of money and a lot of intellectual power. Most sections of the University have a more fragmented private sector to deal with.

Mr. Flattum said there should be strict guidelines and the University should not "give away the store" because money has been given. In the case of songs, producers may do a lot but do not get the royalties because they did not write the songs; they may get a tremendous fee and participate in royalties but they do not get writer's credit.

Perhaps the core principle that must be preserved is academic freedom, Professor McConnell maintained. Sometimes that means one does what one thinks right in their scholarship irrespective of what others think. That is a special privilege and obligation on a campus. The University should not cut a deal that infringes academic freedom. Such outside funding might also shift the balance in the University away from some disciplines, he added. There is also the question of diversity; if the University comes to rely on a lot of money from one company, and the company does poorly financially, then the University will be harmed. There is a responsibility on the part of the institution to preserve a diversity across disciplines. Diversity and academic freedom, Professor McConnell suggested, might be close to general principles that could be used to devise answers to a number of the questions.

What size fraction of the pie would one company be allowed to contribute, beyond which the funding would not be diverse, Dr. Bloomfield asked? Is the proportion to that of total research dollars or to private research dollars? And how much of the "output" can be captured is a trickier question, Professor Anderson added.

What model of the University is posed by these questions, Professor Brewer asked? It should not be the University of Minnesota, Inc. There should be a difference, there should be things that distinguish what the University wants to maintain. Even in areas that are not TOO different from the private sector, there is still a mission to maintain.

If the University gives up opportunities for private sponsors, will that limit access to resources that could go to parts of the University that are more difficult to fund, Dr. Bloomfield asked? One could require that if an organization wants a bigger piece of the pie, it must provide more money, some of

which can go to other parts of the University, Mr. Flattum suggested. That, Professor Hamilton replied, is a slippery slope. Professor Poppele later observed that even if an organization funds other things beyond the immediate research, it could pull out, leaving the University high and dry, which is another reason for diversity in funding.

Dr. Bloomfield said that argument (if an organization wants a bigger piece of the pie, it must provide more money, some of which can go to other parts of the University) had been made by a department head and he was offended by it; now it reappears. The University is asked to do more than it can afford and it finds it hard NOT to do more than it can afford (there are lots of things that need doing). If it does not take all the money it needs it will not have the money to put in the directions it wants and it could make political enemies. What are the principled stands the University could or should take? Are there also pragmatic issues that it can deal with?

Dr. Bloomfield's questions suggest that external funding may, at times, be the only way for the University to launch important initiatives, Professor McConnell said. And the University is obligated to help build the economy of the state. That is technology transfer, Professor Hamilton said. Professor McConnell replied that if the agreement is before the research, it involves these questions; if after, it is technology transfer.

Perhaps it is better to have money that funds the University's general mission, rather than funds to a single department, Professor McConnell said.

Self-generation of income is one solution, Mr. Flattum suggested. If the University does not want to see a flood of dollars that are later cut off, it could avoid the problem with self-sustaining funding. The suspicion arises, however, Dr. Bloomfield said, that those faculty or parts of the University that are best able to generate funding will be favored, receive more money, hire new faculty, and thus there is an institutional conflict of interest. That happens now with federal funds, Dr. El-Fakahany pointed out.

Is there funding for centers where competitors can show up together, Professor McConnell asked? There is and it works well, Professor Hamilton said, and one must only be sure there is no conflict of interest at the faculty or center level. If the sponsors want a particular project, they must pay for it, Mr. Wink said, but sponsors do obtain access to meetings and newsletters, get interns, and so on; they also get an early look at research and access to students, Dr. Bloomfield added. The Center for Interfacial Engineering was set up with these purposes in mind.

Dr. Bloomfield referred to (11); the subtext of the TKU articles implied an answer (that private funding is always suspect while government funding is not) that may not be correct.

Professor Hamilton said he would like to hone down the points and distill them for the Faculty Consultative Committee discussion of this topic in the spring. Dr. Bloomfield suggested focusing on a certain subset of the questions that could lead to policy.

5. Animals in Research

Professor Hamilton reported that he had learned the Senate Committee on Social Concerns will hear from the advocates of animal rights and it may be asked to make a statement against the use of

animals in research, especially projects that use primates. He said he will speak to the chair of the Social Concerns committee about this matter.

Professor Hamilton adjourned the meeting at 3:10.

-- Gary Engstrand

University of Minnesota