

THE UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of the Regular Assembly Meeting, January 24, 1972

ATTENDANCE

Present: Rutledge, Allen, Asgar, Bertolaet, Birch, Bishop, Bowditch, Bowman, Castor, Cohen, Ledger, Cooperrider, Cornish, Darvas, Ehrenkreutz, Franken, Goodman, Graebel, Mohler, Heller, Higgins, Hinerman, Hood, Colburn, Kerr, Kish, Berkove, Longone, Magee, Loomis, Nystuen, Overseth, Paul, Pollack, Preston, Rigan, Rucknagel, Sandalow, Sawyer, Scherer, Schulze, Schuman, Moore, Hertzler, Wilkes, Youngdahl, Zweifler, Kincaid, Norman

Absent: Anton, Buning, Bett, Crawford, Boles, Dowson, Reade, Huntington, Iglehart, Kahn, Lloyd, Meyer, Hafter, Ryder, Sana, Simpson, Verheyen, Votaw

Guests: Members of the Classified Research and Research Policies Committees; and Academic Affairs Committee.

CALL TO ORDER

Chairman Norman called the meeting to order at 3:22 p.m. in the School of Public Health Auditorium.

APPROVAL OF MINUTES

The minutes of the December 20 meeting were approved as distributed.

ANNOUNCE-  
MENTS

Chairman Norman announced that, interpreting the discussion in the preceding assembly meeting as encouragement to proceed, SACUA and President Fleming were in the process of setting up a steering committee along the lines suggested in the President's proposals. The Student Government Council had been invited to send representatives, and it was expected that the group would be called together within a matter of days. Every effort was being made to get the plan into actual operation.

REPORT OF SACUA ACTIVITIES

There being no questions, Chairman Norman called on Professor John Bowditch to report on SACUA activities since the preceding assembly meeting. His report follows:

Since the last Assembly meeting, SACUA has met on January 10, 13, 14, and 17.

The meeting on the 10th included representatives from the Academic Affairs Advisory Committee. It was chiefly concerned with the report of that committee to the Assembly on policies governing salary adjustments, which has been distributed to you. There was also some discussion on questions raised by a communication from SGC on the appointment of student members of committees. It was agreed that Warren Norman should pursue the issues with SGC representatives.

The meeting on the 13th was attended by members of the Research Policies Committee and a representative of the College of Engineering, and was largely devoted to the issue of proprietary research. Agreement was reached on the form of a motion to be presented to the Assembly.

(It will be found in the report on proprietary research that has been distributed.)

The chief subject-matter of the meetings on the 14th and 17th (the latter with President Fleming) was the President's set of proposals on planning and budgeting, communicated to the Assembly at the December meeting.

As usual, some time was spent in selecting nominees to fill committee vacancies.

ELECTION OF  
SACUA MEMBER

Since Professor Bernstein, the Chairman of the Research Policies Committee, could not be present to comment on his Committee's report until later, Chairman Norman proposed that the order of agenda items should be altered, with items 6 and 5 to be taken up in that order before item 4. There were no objections.

Accordingly, Chairman Norman turned to the election of a SACUA member to replace Professor Roger Lind. He explained that Professor Lind had wanted to resign earlier, because of a heavy work load in the School of Social Work, but had been prevailed upon to remain until the close of the preceding term. However, since Professor Lind's term on SACUA had begun a half year early, the Chairman felt obliged to accede to his renewed request to resign. Accordingly, the SACUA members whose terms were to expire this year formed a subcommittee to nominate candidates for filling the vacancy. Professors Frederick Goodman and William Kerr were approached and were willing to have their names placed in nomination. Resumes had been distributed in accordance with current SACUA election procedures.

There were no nominations from the floor, and a motion to close the nominations was passed. Ballots were then distributed. [It was announced later that Professor Kerr had been elected.]

REPORT ON  
SALARY AND  
WAGE  
PROGRAM

In accordance with the revised agenda, the next item of business was the report of the Academic Affairs Advisory Committee on the salary and wage program.

Professor Dunn, representing the Committee, made a few comments. These referred primarily to items V and VI of the report. The committee felt that there was need for some discretionary funds, but not in such large amounts as to permit a shift in priorities without further consultation. The figure of 5% mentioned in recommendation VI seemed to the committee to be in line with these objectives.

A vigorous discussion followed, in which Professors Bowditch, Cohen, Darvas, Dunn, Colburn, Ehrenkreutz, Kish, Moore, and Rucknagel, Chairman Norman, and Vice-President Smith took part.

One question that was raised by a number of persons was the extent to which the Committee looked into inequities in salary between different units. Professor Dunn said that the Committee did not have the information that would have enabled it to do this intelligently and that in any case it was not going to attempt to formulate a new salary policy for the University. He understood that other groups would be considering this question.

Vice President Smith added that the problem was not one of factual information, all of which had been disclosed to the Committee. The difficulty lay rather in answering questions like "What is a good salary for Zoology?" It was hard to say what would constitute adequate data for answering that sort of question. In response to further inquiries, Vice President Smith went on to say that rumors that other units were better off were always present. For twenty years each unit had received the same percent of salary base. Some of these might have used these resources better than others. It was not easy to decide when a unit had become non-competitive.

There were some comments about the figures used in discussing staff benefits. Vice President Smith pointed out that the cost of existing benefits would rise without any improvement in the benefits themselves. For example, increased costs for health insurance and for Social Security would amount to slightly over \$500,000 for 1972-73.

(In this connection, Professor Dunn brought out the fact that the parking structures are now paying for themselves.)

There were a few questions arising from the recent disclosure of salaries at MSU. Vice President Smith said that the impact there depended on who you talked to. He said that the policy here was firmly against disclosure of individual salary data, although anonymous data had been supplied when it was deemed necessary; for example, there was a recent disclosure of comparative men's and women's salaries.

Professor Bowditch said that the same amount of money meant more to some schools than to others. He pointed out that some units had grown faster than others, and that a serious inequity could build up in the course of 20 years. He moved to amend the report by changing the figure of 5% in policy recommendation VI to 10%. The motion was seconded by Professor Kish.

Professor Dunn opposed the motion, saying that the committee had discussed the issue and considered 10% to be too high.

After some further discussion, the question was called for, and the motion failed.

The report as a whole was then accepted by a unanimous vote.

REPORT ON  
PROPRIETARY  
RESEARCH

Turning to the next agenda item, Chairman Norman remarked that two communications from the Research Policies Committee had been distributed. The longer one was a report on proprietary research embodying a set of recommended policies, while the other concerned procedures. He suggested that the procedures could be left for later consideration, while attention was concentrated upon the policy recommendations. He reviewed the history of recent actions in this area, and said that the proposals were intended as a uniform set of policies applicable to all research at the University. They had been discussed thoroughly by both the Research Policies Committee and SACUA, and he hoped that action on them could be completed without having to call a special meeting. He then invited Professor Bernstein, as chairman of the committee, to come forward and open the discussion.

Professor Bernstein presented the following statement:

In March, 1971, Senate Assembly directed the Committee on Research Policies to "examine the question of classified and proprietary

research at the University" and to "work out means of barring classified military research whose clearly foreseeable purpose is to destroy human life or to incapacitate human beings." The Committee responded on September 1, 1971, to that part of the charge involving classified research, making recommendations for change primarily in the procedure for review of classified contract proposals since the Committee's evaluation of the situation indicated that Senate Assembly's objectives vis-a-vis classified research could be met in this way. However, the Assembly, in September of last year chose to alter its approach to the matter of classified research on Campus by placing greater emphasis on ensuring "open publication of results" than on "barring classified military research." In this context, the Assembly enunciated a set of policies focusing on open publication as a major criterion for the acceptability of research on campus. It became apparent during the Committee's examination of proprietary research in the months since last September that certain modifications and interpretations would allow the application to proprietary research of the Assembly's proposed policies on classified research. This, in the opinion of the Committee, could be done without materially altering their effect on classified research thus freeing the Assembly from any possible criticism that its members had undemocratically discriminated against a particular group of their faculty colleagues.

With this in mind your Committee unanimously submits to you the recommendations included in a report on proprietary research at the University.

A few words of clarification may be useful in regard to several selected aspects of the recommendations.

Firstly, the extent and nature of presently active proprietary research makes it a significant fraction of the University's total sponsored research effort.

Secondly, the Committee recommends that the Assembly's proposed Policy I be altered to indicate that "limit of open publication" means "beyond one year". Obviously a failure to allow some such period of time would proscribe all proprietary research whereas a one year limit would allow most proprietary unclassified research to go on, while providing necessary time for safeguarding the sponsor's rights with regard to input of information or output of results. This definition of time limit would not provide a loophole for classified research since sponsors of classified research could not and would not enter into any contract which stipulates a release of information within one year and in any case, Policy II would still be a deterrent to accepting a research contract of military import.

As you note, the Committee has suggested interpretations of the word "limit" so that it would not apply to "access only" classified contracts or to those agreements, contracts or grants which "merely require a review of reports of the research prior to open publication."

Since "open publication" is to be the major criterion for acceptability, the Committee recommends that the word "limit" in Policy I not apply if restriction on publication applies to items of information which are inessential for publication of the work in a scholarly journal.

Thirdly, the Committee recommends that the phrase "clearly foreseeable results" receive some interpretation so that the Policy will not be broadly interpreted to mean "any remotely possible results".

Fourthly, the Committee recommends changes in each proposed Policy so as to make them applicable to all sponsored research on the campus.

Finally, the Committee urges that the Regents be requested to explicitly adopt Policies I-IV in whatever form they emerge from Assembly deliberations as governing policy for all research at the University.

The Committee is pleased to offer its report on proprietary research to Senate Assembly for debate on the merits of the recommendations included and, if acceptable, for adoption.

It is appropriate for me as chairman to note publicly the great amount of time and effort my colleagues on the Committee put into developing this report and to thank them for their cooperation.

Chairman Norman said that he wanted to echo the final statement of the report, and added that the chairman in particular deserved everyone's thanks for the yeoman service he had done over a period of many months.

An extensive discussion followed, participated in by many Assembly members, by some members of the Research Policies and Classified Research Committees and by Vice-President Norman.

Professor Wilkes drew attention to a statement by Professor Donald L. Katz of the Department of Chemical Engineering, which he had just distributed to members of the assembly. Professor Wilkes then discussed the hypothetical case in which an industrial sponsor supported research over a period of years, during which much useful experience and equipment were built up, and then asked that some more work should be done which was to be kept from publication for a period longer than a year. Refusing this request might seem ungracious, and might lead to a severe setback in the research program.

Professor Bernstein replied that while he could hardly address himself to specific cases, a department faced with such a situation could ask the review committee to make an exception.

After a general discussion had continued for some time, Professor Schuman suggested, and Chairman Norman asked, that the policy recommendations should be taken up in order. The following account is organized in the same way, rather than chronologically.

With regard to policy I, there was considerable discussion on the question of when the one year delay was to be counted from. Chairman Norman and Professor Bernstein said that the time would be counted from the submission of a report to the sponsor. Professor Asgar and some others felt that the legislation was not entirely clear, particularly with regard to submission of multiple reports from one project. Professor Rucknagel moved that the policy should be amended to read "beyond one year after submission of reports to the sponsor". Professor Asgar seconded the

amendment and moved to amend it by replacing the word "reports" by the words "the final report"; this was seconded by Professor Wilkes. Professors Scherer, and Franken argued that this wording might permit a sponsor to bottle up output from a project for years. The amendment to the amendment was defeated. After some further discussion, the original amendment was also defeated.

The discussion now turned to the interpretative footnote attached to Policy I. Chairman Norman said that the footnote had been added because much concern had been expressed about whether "access only" classified research was to be permitted as a matter of general policy, and also about the status of research that had a very small classified component.

Professor Schuman moved (with the second by Professor Scherer) that paragraph (b) should be dropped and paragraph (c) altered to remove references to (b).

In the discussion, some concern was expressed that (b) might represent a loophole of uncertain dimensions. It was also asserted that proposals to which this provision would have been applicable had been of very rare occurrence. On the other hand, it was pointed out that there could not really be a loophole here, since a proposal would still have to be reviewed for conformity with the other policies. Professor Youngdahl said that this provision might be pertinent to many unclassified proprietary research projects. The amendment was put to a vote and failed.

There was extensive discussion of Policy II and its interpretive footnote. Professor Gamson and Mr. Fleming, of the Classified Research Committee, talked about current committee procedures and the possible effects of changes in wording. Professor Scherer said that in his judgment an important point was that the new wording should make it impossible for the Review Committee to approve certain projects that had been criticized for their direct military applications. He moved that Policy II should be amended by replacing the words "the specific purpose or clearly foreseeable results" with the "the clearly foreseeable results or any specific purpose", and also to add a sentence to the footnote as follows: "the specific purpose includes the purpose of the sponsor." The motion was seconded by Professor Cohen. Professor Scherer said while the proposed changes were very slight verbally they should help to clarify the Assembly's intentions.

Chairman Norman asked for separate votes on the amendment to the statement of policy and to the footnote respectively. The amendment to the policy was then passed by a unanimous vote.

There was further discussion on the proposed change in the footnote. Professor Bernstein suggested that the emphasis on the sponsor's purposes might decrease the emphasis placed on those of the proposer. Professor Schuman proposed an amendment to the amendment (seconded by Professor Schultz), which would change the wording to "Specific purpose includes the purpose of the sponsor or of the investigator".

Professor Franken opposed the motion, saying that it involved asking the review committee to judge the motives of the researcher. Chairman Norman noted that there had been earlier objections from the Classified Research Committee against attempts to judge motivation.

The amendment to the amendment was voted upon, and failed on a voice vote. The original amendment was then voted on, and defeated by votes 12 to 26.

A great deal was said about the possible deleterious effect of Policy II on medical research. Chairman Norman said that a further stipulation dealing with this had been proposed in SACUA, but that it was abandoned when it proved impossible to agree on satisfactory wording. A point made by several speakers was that in mass testing of drugs, for example, there were almost sure to be some adverse side effects in some people, and this would seem contrary to the policy being discussed. There was also concern about research on abortion and the like. Professor Hinerman went so far as to say that the literal interpretation of the policy would end 90% of medical research. Professor Bernstein, however, disputed this.

Professor Goodman moved an amendment to the policy corresponding to the wording of Policy I, adding the words: "This general policy will be suspended only in cases where the proposed research is likely to contribute so significantly to the enhancement of human life as to justify its infringement." Professor Berkove seconded the motion.

Professor Scherer expressed great sympathy with what was being attempted, but pointed out that any attempt to balance benefits against deleterious effects might admit some of the military research projects that people were trying to prevent. Professor Castor said that he thought some such amendment was necessary in order to permit the Human Use Committee to operate. On the other hand, Professor Zweifler said that he thought this wording would confuse the Human Use Committee. He said that he preferred a suggestion by Professor Hinerman that the Assembly should approve the principle involved without pinning down specific wording. Professor Sandalow reminded the group that language similar to the proposed amendment was first included, then dropped. Professor Overseth asked whether some statement could be inserted that policy II was not to supersede the Human Use Committee. Professor Sandalow recalled the history of this policy, and suggested that if Policy I were taken seriously, there might be very little classified research done. Under these circumstances he asked whether Policy II might be deleted. Chairman Norman pointed out that Policy II, in a slightly different form, had been on the books for three years, and that the Human Use Committee had been operating for that entire period, without producing any conflict that he was aware of.

Professor Goodman expressed a willingness to withdraw his amendment, but unanimous consent was not secured for his doing so. The amendment was then put to a vote, and defeated.

Chairman Norman pointed out that the meeting had already gone a half an hour overtime, and he was hoping to avoid a special session on this issue. He asked if there were any more amendments to be proposed.

Professor Franken asked if there could be a vote on the sense of an amendment of the sort being discussed. Chairman Norman thought such a vote should be put off till after the policies as a whole had been voted on.

There being no further amendments proposed, the policies as a whole were voted on. The resolution passed by a vote of 33 in favor to 3 against with 2 abstentions. The text of the policies follows:

I. The University will not enter into or renew any agreement or contract, or accept any grant, that limits<sup>1</sup> open publication of the results of research beyond approximately one year. This general policy will be suspended only in cases where the proposed research is likely to contribute so significantly to the advancement of knowledge as to justify infringement of the freedom to publish openly. In all cases, the burden of the proof rests with the members of the University community who propose or plan to carry out the research.

The clarity of Policy II would benefit from certain interpretive comments, as follows:

II. The University will not enter into or renew any agreement or contract, or accept any grant, the clearly foreseeable result<sup>2</sup> or any specific purpose of which is to destroy human life or to incapacitate human beings.

Minor changes in Policies III and IV are indicated by the underlined words in the following. These are made for the sake of consistency with earlier policies.

III. The University will not enter into or renew any agreement or contract, or accept any grant which would restrain its freedom to disclose (1) the existence of the document or (2) the identity of the sponsor, and if a subcontract is involved, the identity of the prime sponsor.

IV. The University will not enter into or renew any agreement or contract, or accept any grant which would restrain its freedom to disclose the purpose and scope of the proposed research. This policy will permit informed discussion within the University concerning the appropriateness and significance of such research.

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<sup>1</sup>For the purpose of administering this policy, the term "limits" shall not be construed as applying to the following types of agreements, contracts, or grants:

(a) Those classified or otherwise restricted solely for purposes of providing access for the researcher to classified or other restricted documents, equipment, or facilities.

(b) Those which restrict only the publication of certain items of information, such as numerical constants or equipment parameters or settings, that are identified by the researcher in the course of his investigations but are inessential for open publication of the results.

(c) Those which merely require a review of reports of the research prior to open publication to insure that (i) classified or otherwise restricted information to which the researcher has access as in (a) above, and/or (ii) items of information as specified in (b) above will not be compromised by the publication of such reports.

<sup>2</sup>The phrase "...clearly foreseeable result..." in this statement is not intended in the broadest sense of any remotely possible result. Rather it is to be construed in the more limited sense of what could be judged reasonably to be the probable or relatively direct consequences of such research, or of its applications.



Professor Schuman asked what the status was of paragraphs V and VI of the earlier Assembly resolution. Chairman Norman said that they were presumably still on the books. Professor Schuman said that he would like to propose an amendment to those sections to apply them to the Classified Research Committee immediately. Chairman Norman expressed reluctance to open the question of mechanisms before the Regents acted. Professor Schuman asked if these sections were to remain in limbo until the Regents acted, and Professor Norman agreed.

Professor Schuman then asked whether a change of this nature in VI alone could be considered. Professor Kerr moved to adjourn. Chairman Norman refused to put the motion to adjourn before the Assembly, but also ruled that Professor Schuman's proposal was out of order, since it was not part of any motion that was properly before the body.

OLD  
BUSINESS

Chairman Norman then opened the floor to old business. Professor Schuman, with a second from Professor Cohen, moved that Section VI of the earlier resolution should be put in effect with "Classified Research Committee" in place of "review committee." Professor Scherer urged that nothing should be done that would stand in the way in getting Policies I-IV to the Regents as fast as possible. Professor Kerr asked whether a quorum was present. Chairman Norman counted 32 present, insufficient for quorum.

Chairman Norman said that the resolution would be transmitted to the Regents without further instructions being required, and replied in the affirmative when Professor Schuman asked whether the resolutions were likely to get serious attention from the Regents.

JOURN-  
MENT

The meeting adjourned at 6:20 p.m.

Wilfred M. Kincaid  
Secretary