

January 16, 2009

To the Senate Ad Hoc Committee on Conflict of Interest/Conflict of Commitment:

I would like to follow up on my earlier blog posting with some specific suggestions for revising the draft COI/C policy. They primarily concern scholars in the humanities and social sciences, who are unrepresented on the ad hoc committee.

**I. Section 4.6(c) should be scrapped in its entirety.** It is inappropriate that any university-wide COI/C policy take a stance on the scholarly merits of textbooks or the (often tenuous) distinction between textbooks and other forms of faculty publication. University officials may well indulge their opinions on these subjects when, for example, evaluating tenure and promotion cases, but to regulate faculty publication so intrusively, and before the fact, would constitute a fundamental breach of academic freedom. Leaving the textbook question completely untouched, by striking section 4.6(c), would have the desired effect of protecting a freedom that is, after all, already enshrined in the university's formal statutes and informal culture.

There is another problem with section 4.6(c). Its last clause prohibits the use of university resources for the production of "other publications when those publications are not specifically required by the individual's University employment." I know of *no* publications that are *specifically* required for academic employment, only those which are *generally* required for promotion and tenure, and whose specific forms are seldom if ever spelled out in employment contracts or other formal documents. A perverse—though entirely legitimate—reading of the section might therefore construe *all faculty publications to be disallowed* when their authors make use of university resources. This is another reason section 4.6(c) should be eliminated. It is badly conceived, and badly formulated.

**II. Book royalties even in excess of \$10,000 a year may be subject to disclosure but should be explicitly exempted from management plans and other forms of administrative oversight.** Earning book royalties generally does not pose conflicts of interest or commitment, for two reasons:

(1) Royalties are earned passively, i.e. without "outside activity" on the author's part beyond one's normal scholarly duties. A faculty member who writes a book sends it off into the world and the market decides what profits, if any, the publication generates. The act of scholarship and the profit-making activity are one and the same; hence there can be no conflict of either interest or commitment. (Any outside activities, such as invited lectures, that have the *ancillary* effect of publicizing a book and increasing its sales are already covered by other provisions of the COI/C plan.)

(2) Book authors do not have the same kind of personal financial stakes in their publishers that they do in other types of commercial enterprises from which they may derive income (such as startups or consultancies, where they may function as

officers or staff). They serve their publishers' profit motives in the very act of scholarship, and not through activities that detract or distract from their scholarship. Again, there can be no conflicts here.

**III. Faculty members should be explicitly permitted to assign their own books in courses they teach, with procedures of due diligence spelled out and dramatically simplified.** Question #20 on the FAQ (<http://orcr.uoregon.edu/node/11>) has a reasonable provision on assigning one's own books. It suggests that individuals "for[go] or donat[e] royalties received on the sale of textbooks utilized by their own students, or [perform] due diligence showing that the textbook being used is uniquely suited for the specified class use."

Such provisions ought to be explicitly incorporated into the policy document, and not left to an FAQ or to ad hoc administrative judgment, which may be capricious. Since at other campuses, students and public watchdogs have made this an issue, unfairly stigmatizing many professors who also happen to be published authorities in their fields, we should handle this question preemptively.

This policy, however, *must* be administratively simplified so as to minimize the burden on faculty members' time. It is logistically quite difficult, for example, to compute the precise amount of royalties derived from assigning a book to a student. Different royalty percentages apply to different types of publication and sale (hardcover or paperback, used or new, online or in a bookstore, current or previous editions, etc.). And not only are these percentage scales embedded in thick legalese in book contracts, but they may rely on sales information that is unavailable to authors or difficult to obtain from their publishers.

A better approach, then, would require faculty members to explain to their classes the pedagogical and intellectual grounds for favoring their own books, thereby showing due diligence in the very act of their normal teaching duties. Any conflict of interest would be dispelled by the open and public nature of the disclosure. Professors, in making a case for the value of their own writings, would teach students the valuable lesson that textbooks, far from merely containing knowledge in a profit-making package, always represent their authors' interpretations of and interventions in ongoing disciplinary debates. One cannot therefore substitute one textbook interchangeably with another, least of all one that represents the distillation of a faculty member's own thinking about its subject.

So too, faculty might redistribute their royalties to students by passing out cookies and juice at an end-of-term party, for example—which in many cases would neatly offset the extra income a faculty member has just earned from assigning a book to his or her students.

Ian F. McNeely  
Associate Professor of History  
<http://www.uoregon.edu/~imcneely>