

Minutes*

Senate Committee on Educational Policy
Wednesday, November 10, 1999
1:00 – 3:00
Room 238 Morrill Hall

Present: Judith Martin (chair), Wilbert Ahern, Steve Fitzgerald, Darwin Hendel, Gordon Hirsch, Karen Seashore Louis, (George Green for) Christine Maziar, Kathleen Newell, Marsha Odom, Riv-Ellen Prell, Tina Rovick, Richard Skaggs, Suzanne Bates Smith, Rita Snyder, Thomas Soulen, Steven Sperber, Craig Swan, Lisa Wersal

Regrets: Emily Hoover

Absent: Bradley Wuotila

Guests: Nancy Hoyt, Barbara Shiels (Office of the General Counsel); Executive Vice President Robert Bruininks, Associate Vice President Stephen Cawley (Office of Information Technology)

[In these minutes: class notes on the web; policy on repeating courses; distance education]

1. Class Notes on the Web

Professor Martin convened the meeting at 1:00 and welcomed Ms. Hoyt and Ms. Shiels to help the Committee think through the intellectual property issues surrounding the question of placement, by students, of their notes on the web.

Ms. Hoyt began by discussing the intellectual property issues, and told the Committee that the General Counsel's office would try to address any issues that were raised. These are not new issues, she noted, but there is now more concern about class notes on the web because companies are hiring students to put their notes on a web site. This raises questions both about faculty work products and the impact of the practice on students.

Copyright law is the primary area to focus on to address the issue. In general, treatment of University educational materials that faculty work products, such as handouts and the like, is quite different from treatment of lectures. The case is not clear with lectures; faculty have legal recourse, but the cases are difficult. Ms. Hoyt said she would try instead to identify some practical solutions.

The bottom line is that faculty must take action to protect their copyright rights and must consider other legal avenues as well. For institutions, a code of conduct is the most common course of action. The institution and faculty together must focus on educating students about what is expected.

Does one have a work that can be copyrighted? Copyright protects an idea, not the expression of the idea. FIXATION is required by copyright law--something in writing, on software, something fixed;

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recitation does not normally equal fixation for copyright purposes. Most faculty, talking from notes, do not produce something fixed in their lectures, so the lectures are not typically susceptible to copyright.

Most states have common law protection that needs to be examined more closely, Ms. Hoyt said. Generally, under common law, fixation is not required, so it may be possible to establish protection under state law. With the new copyright law, it is not clear that state common law still provides protection, and that will have to be explored.

What about interstate commerce law, asked one Committee member? If one considers the web as a medium of interstate commerce? That is possible, Ms. Hoyt said, but state law is more favorable. For intellectual property that is not fixed, the only protection is probably provided by state law.

An individual must still prove authorship, even with common law. The general consensus is that the best way to do so is to record lectures. Ms. Hoyt said she was NOT necessarily recommending that all faculty record all their lectures, but said that that would constitute fixation. Another option is to read the lectures, which is an unattractive idea; another is for the faculty members themselves to write and distribute notes. One Committee member observed, however, that the market would be destroyed if faculty member provided their own notes.

Putting notes on a web page would also constitute fixation beyond any doubt, Ms. Hoyt said; if they are copyrighted, then there is a question of infringement. She said, in response to a question, that if a student's notes were not verbatim, and deviated from the presentation, the presentation would not be protected. The question of infringement is very fact-specific: if there is a verbatim presentation, it is infringement; if it is simply the facts and ideas contained in a lecture, it is unlikely to be infringement and the lecture is not protected by copyright law. Another question is whether notes are derivative or independent--are they so different that they are not an infringement? Presumably, notes have most value if they are derivative.

One interesting issue is whether, when a faculty member stands in a classroom and lectures, there is an implied license from the faculty member to take notes. She said she would argue that there is, Ms. Hoyt said; faculty have encouraged students to take notes for years. If there is an implied license, the faculty member must make clear that it is a LIMITED license. Faculty can make it clear that students are invited to take notes, but that they may not make commercial use of the notes.

Could such a notice be written in the Student Conduct Code? Or announced in class? asked one Committee member. Both are possible, said Ms. Hoyt; so are including the notice in the syllabus and the course catalogues. She said she could provide the Committee with a sentence that could be used. She said she also likes to see copyright notices on materials; the law does not require that the notice be included for the copyright to exist (including for notes placed on the web), but the notice informs people. Much copyright infringement, she said, is innocent. The notice should be included on any material the faculty member is concerned might be copied. Some find this offensive and legalistic, but if they are concerned, they should put the notice on course materials, software, and the like.

Ms. Shiels now informed the Committee about the Student Conduct Code. It would be possible to amend the code; there is no provision of the existing code that applies to this issue. Such an amendment would have to be approved by the Board of Regents and would be a lengthy process that could raise other issues as well. The code does have a provision, however, that a violation of other

University rules and policies that have been posted is a violation of the code, so establishment of a Senate policy would likely have the same effect.

In drafting such a policy, Ms. Shiels advised the Committee, it should understand that historically the Student Conduct Code, and college codes, only regulate student conduct on campus, such as in the classroom or laboratory. If a student posts his or her notes through a University listserv, it would probably be covered--but most of these commercial firms do not make use of institutional web sites or servers. Since this would regulate off-campus behavior, it would require careful drafting. (One Committee member observed that if one took a library book to an off-campus apartment and cut it up, the University would certainly charge that student.)

It must also be drafted broadly enough to cover all undesirable behaviors but also provide notice to the student of what behavior is prohibited. This will require careful thought about where the Committee wishes to draw the line. Taking notes is not a problem; sharing notes with classmates who missed a class is probably not a problem; study groups and other organized efforts within the class that includes sharing notes is probably not a problem.

One Committee member said that sharing the notes for financial gain is the problem. Ms. Shiels said she understood, but if so, the faculty member or the University must prove that dollars exchanged hands. The University does not have subpoena power. That (financial gain) is what the Committee wants to get at, but if that is what the policy is aimed at, the charge will be difficult to prove and to make stick.

What is the offense? Mass distribution of notes through a third party outside the University without faculty permission, Ms. Shiels said. The policy must be written in a way that a violation can be proven.

It is also necessary to articulate why the practice is offensive and a problem. Two reasons have occurred to her: (1) it is a misappropriation of ideas without permission, a sense of having violated intellectual property rights, and (2) it is detrimental to the educational process in that it encourages a lack of class attendance, the notes could be poor quality that include misinterpretations or misreadings of lectures and class materials.

Ms. Shiels also pointed out that the draft "Guidelines on Classroom Expectations," as GUIDELINES, is not a document under which one can charge anyone with a violation. There must be a separate policy and rationale.

The jurisdictional question (covering off-campus behavior) is not impossible to get around, Ms. Shiels said, but there could be challenges to it. The offense is in what a student does AFTER the notes have been taken. Most would not think it a problem if the use of the notes were limited to the class; it is taking them outside the University that is the problem. The University can regulate off-campus conduct if it can show a nexus between the policy and role of the individual as a student.

Is there any invasion of privacy issue, asked one Committee member, when materials are placed on the web, connected to the faculty member in ways that are not desired? Ms. Hoyt said there might be a privacy issue if the notes are attributed to the faculty member, but the companies that provide them have huge disclaimers saying the notes are not the professor's.

Ms. Shiels advised the Committee that it would be easier to adopt a Senate policy, and have it fall under the Student Conduct Code in that manner, than to amend the code itself. She said she would be glad to help in drafting a policy.

Professor Martin thanked Ms. Hoyt and Ms. Shiels for joining the Committee.

2. Policy on Repeating Courses

Professor Martin now welcomed Associate Dean Gerald Rinehart from the Carlson School of Management, representing the Council of Undergraduate Deans (CUD). She noted that the subject was the policy on repeating courses, contained in the grading policy--an issue that the Committee seems unable to get rid of. Another question that CUD has raised is for how long students will be permitted to graduate under the quarter system.

The current policy on repeating courses is the one that SCEP recommended to the Senate: a student may repeat a course as often as he or she wishes, but only the final grade will count and ALL grades will appear on the transcript.

Dr. Rinehart observed that everyone seems to have an opinion on repeating courses, but many find the current policy to be troublesome. There are competing values at work: one is to allow repeats, in order for a student to obtain mastery of course materials; another is fairness, because not all students have the ability to pay the tuition for repeating a course.

The language that CUD is recommending is this: "students may repeat a course in which a grade of D+ or lower is earned. The most recent passing grade and credits count in the GPA and credit totals." Alternative language is this: "When a student repeats a course in which the initial grade was D+ or lower, the most recent grade and credits count in GPA calculation and degree progress. When a student repeats a course in which the initial grade was a C- or higher, only the initial grade and credits count in GPA calculation and degree progress."

Dr. Rinehart pointed out that the University cannot prevent a student from registering for a course as often as he or she wishes, but it can decide how to treat the grade earned. This removes the incentive to re-take a course to raise the grade. Some Big Ten schools count both grades in the GPA, but it is the view of CUD that that makes it more difficult for a student to improve the GPA.

One unintended consequence of this proposal, one Committee member speculated, is that students who are getting a C in a course at mid-semester will abandon the course and take it again, especially if they are in pre-professional programs where entrance to the professional program is highly competitive. Other Committee members did not agree, noting that all registrations would be on the transcript, and that a transcript with a lot of withdrawals would not be favorably viewed by graduate or professional admissions committees. (A student has until the 8th week of the semester to drop with a W without permission, and also has one opportunity during their undergraduate work to drop a course at any time without any transcript entry. Students may also drop a course within the first two weeks, in which case there will be no entry on the transcript at all. There is a cost penalty in all cases, of course.)

Under the policy, Dr. Rinehart said, individual colleges would have the right to make exceptions.

Why not, asked one Committee member, require students to audit a course, if the goal is competence? An audit is paid for and entered on the transcript. The Committee has heard of instances when a student was told to take a course until he or she earned a B, in order to be admitted to another program, so the student retakes the course even though a C was earned the first time. That, it was said, is to provide evidence of competence, not the achievement of competence.

The Committee then voted 15-1, with one abstention, to approve the change recommended by CUD; Professor Martin will carry the item to the Senate Consultative Committee for placement on the Senate docket.

As for the question of how long students should be permitted to graduate under the quarter system, Dr. Rinehart said the colleges and campuses had been asked their views and few had expressed an opinion. The general principle is that if a student started under quarters, he or she can finish under quarters; most colleges seem comfortable with this and believe they can deal with it.

The issue for CUD is that there was an April, 1999, deadline for students to decide whether they wanted to graduate under quarters or semesters; the deadline was not enforced. In some colleges, students who said they intended to graduate under one calendar system have been changing their mind. Dr. Rinehart said he did not believe a policy statement was necessary, because the number of students in this position will get smaller over time, so there will be no need for a policy.

The Committee next discussed briefly a problem with students who, it was said, are not being admitted to CLA if they self-identify as pre-med or pre-dentistry or the like. CLA has eliminated the "pre-" categories, but admits a lot of students who plan to transfer into a professional program; those students must, however, declare a major while they are in CLA. Besides, one Committee member pointed out, under IMG it would be unwise for CLA to refuse admission to students.

Professor Martin thanked Dr. Rinehart for coming to the meeting and providing the report from CUD.

3. Retention of Records

It was next reported that on the matter of keeping papers and exams, informal advice had been tendered to the Committee that it was reasonable to say that papers and exams should be kept for one term after the course ended, but need not be kept longer than that. Grade books and records, however, should probably be kept for longer periods, perhaps 10 years.

This advice will be taken up when the Committee returns to the Guidelines on Classroom Expectations.

4. Distance Education

Executive Vice President Bruininks and Associate Vice President Cawley now joined the Committee to discuss distance education.

Dr. Bruininks said that distance education is challenging universities from a number of directions. First, technology can now be used to overcome time and distance, so Harcourt, Brace, Jovanovich, and others, are organizing universities. Some who have done so have lost a great deal of money, but there is

tremendous potential. Anyone can come into the University's territory and offer courses on line. There are 21 private vendors offering courses in Rochester as the public institutions debate what they are going to do. All think there is a pot of gold in distance education; only a few providers can put muscle into their efforts.

Second, many organizations can offer the University's bread and butter courses, and the University will need to think about whether it will accept such credits. There could be more entry-level courses offered. Faculty have struggled with this question and are not of one mind on it.

Third, there is an interest in making life-long learning more accessible, and in the context of people's lifestyles. There has been a surge of interest at the legislature in this subject, which has funded joint initiatives with the University, MnSCU, and the private colleges, such as ISEEK. Mr. Cawley has pointed out that there are huge issues about how to organize the state infrastructure to increase access to learning and knowledge.

Distance education is not the central issue, Dr. Bruininks said. The central issue is how best to organize teaching and learning for students. The University must decide where to invest its time and money, rather than chase after the ultimate Internet course in introductory X. But there are places where the University has an advantage in applying technology and programs, and that should be part of any plan. But distance education is a variation on a broader theme.

The issues before the University of Minnesota? Dr. Bruininks noted several.

One, the current situation of the University is that there are three or four big items in budget allocations that will affect its long-term future: faculty and staff compensation, technology and technology training/development/innovation and learning resources, and building remodeling and operation of facilities. How should the institution think about the technology area in the broad sense, and how to bring academic issues into it?

Another is where the University should place its bets. One line of thought is that the money should go into distance education. Another argues that more money should be put into people, used for training faculty and staff, and to better support the infrastructure. To the latter end, there will be \$800,000 put into upgrading classrooms next year and less emphasis on a small grants initiative.

Third, what ACADEMIC ideas are worth pursuing? Some are trendy; what makes sense?

Fourth, how should courses be organized that are in a completely different format? And what about transfers and credits?

Fifth, where should the leadership be located? Distance education is highly distributed; there could be an effort to run it all centrally, but now it is in the Graduate School, Information Technology, and the colleges (the source of the best ideas). The distributed model, with all-University support, is the one that should be used, he said.

Dr. Bruininks distributed to the Committee a draft letter of charge to a task force on distance education and said he hoped the group could wrestle with these questions. He said it must be faculty-driven, must be an interactive and inclusive process that engages the faculty, and he invited comments

and suggestions for the charge. He said he would like the task force to complete its work this academic year, and also needed suggestions for membership.

The University has about 500 distance education courses and they rely heavily on ITV. It costs the University about \$1.5 million annually to subsidize ITV. Dr. Bruininks said this is an issue being worked on, and there is hope that these costs can be reduced. There is also a search for a less costly means of transmission. Most courses on TV have not been interactive (such as UNITE courses in IT), so the instructor does not see the students; those courses are also very cost-effective.

One Committee member said that distance education is a byproduct of technology-enhanced learning, and that faculty will learn to use it as part of their delivery of instruction. Students will, in any event, force that outcome, and technology will be dragged into teaching. Dr. Bruininks agreed that the charge to the task force should not be too narrow, and that it should look beyond distance education.

Another Committee member said that faculty would be driven to distance education in areas where they have courses they want students to take; the incentive is high to do it right when there are students at a distance, because the faculty do not want to have to drive to a distant site every week. Moreover, if the University does not target investments to areas central to its mission, the funds will be too distributed.

A couple of years ago, the University had about \$1 million to put into technology to increase interest in its use; some went into grants for innovative activities and some to training and development. The investments paid off richly. Now, however, as others become interested, the infrastructure is falling behind, so funds are going to classrooms. Dr. Bruininks also noted that there is about \$5 million in technology funds collected through college fees on the Twin Cities campus; it is important that those funds (which are not under central control) be strategically leveraged. There have to be agreements on where large investments should be made. His view is that there should be an improved infrastructure, better support and service systems, and better coordination between central and collegiate investments.

One policy piece that needs to be considered, said one Committee member, is how the institution or programs will react when students or prospective students bring experiences in various media and want them counted in the in their programs. Evaluating these is tough. In the case of graduate work, the requirement is that courses be regular courses from an accredited graduate institution and taught by graduate faculty as part of a degree program, and correspondence courses are not accepted. Now there are correspondence courses by email. If the University is going to challenge the acceptability of such courses, Dr. Bruininks commented, it will have to demonstrate that learning under the University's rules is more effective. That may not be possible. Some would argue that the University should move to an assessment basis of measuring learning. He cautioned that the University could get itself boxed in with policies that erect barriers and lose the core academic interests of the institution.

One puzzle in all of this, Dr. Bruininks mused, is that distance education and technology-enhanced learning is a highly distributed effort, driven by the intellectual curiosity of the faculty. It is like trying to manage research; it can't be done. So how does one think about governance? There is responsibility in the Office of Information Technology, in the Graduate School, in the colleges, in the Senate--no one is bringing it all together. His mantra, he told the Committee, is becoming one about the need to build cross-functional teams to address these shared responsibilities.

One Committee member expressed a concern that distance education be kept in faculty channels and that evaluation of on-line courses be conducted by the faculty. If there is a separate distance education delivery structure, quality could be out the door because the temptations to milk a cash cow could be enormous. If distance education is kept under the same kind of academic decision-making that the faculty now exercise, it will be put in priority and there will be less likelihood of succumbing to temptation. There should not be a separate operation. Another Committee member agreed, maintaining that the faculty control the curriculum.

There will be a need to change the way courses are assessed, however, said one Committee member. In distance education, assessment becomes FAR more important, but there is a tendency not to require faculty to talk about assessment. As there is more distance education, there must be more thought about the importance of assessment in teaching.

Few faculty have instruction in assessment, Dr. Bruininks agreed; they receive their Ph.D. in their specialized field and become faculty without sufficient experience in organizing and addressing delivery for students. Some do well, but it is hit and miss. Peter Drucker makes the point that the changes brought by the Industrial Revolution were not obvious at the time. In the future, computers will be a means, not an end, and cognitive science will have a greater impact on the way the knowledge economy unfolds and how learning is organized and assessed.

One Committee member observed that in writing, one emphasizes the audience; so also for teaching. The best instructor will vary the instruction depending on the audience. The question of the audience has not been wrestled with enough; life-long learning and training for whom? One teaches and writes for different audiences. Then one can ask if the University should continue to go after multiple audiences. Perhaps some do better with some audiences; the assumption has been that the University does best with all of them, and others may do better.

Another question, to be dealt with later, Dr. Bruininks said, is how the University thinks about infrastructure support for what people do here. Things are compartmentalized in departments, colleges, centers, and divisions; resources supporting teaching and learning are also distributed. How does the University ensure that the right resources are in the right place to help people do their jobs?

The report of the task force, Dr. Bruininks promised, would be brought back to the Committee.

One Committee member inquired about MnVU. Dr. Bruininks explained how it was doing, funding, and the problems associated with it. It was begun in the context of the Western Governor's University and the California Virtual University, one Committee member noted--and those ventures have largely faded; they were intended to avoid the need to build campuses, and turned into a "dream without content." Even if they had worked, Dr. Bruininks added, they would not work in a state with only 5 million people, because there are not the necessary economies of scale to support the costs. The opportunity costs for the University of supporting larger-scale efforts in this area would be enormous.

Professor Martin thanked Dr. Bruininks for joining the meeting and adjourned it at 3:10.

-- Gary Engstrand