

Subject: New text policy, part II**Date:** Tuesday, February 14, 2006 4:18 PM**From:** Lawrence R. Williams, Ph.D. <lrwilliams@UH.EDU>**Reply-To:** "Lawrence R. Williams, Ph.D." <lrwilliams@UH.EDU>**To:** <UNDERGRAD-COUNCIL@LISTSERV.UH.EDU>**Conversation:** New text policy, part II**Category:** Undergraduate Council

FYI

Here is the dissenting, minority report from the FS's Faculty Affairs Committee:

Minority Report and Dissent from the Faculty Affairs Committee's
Proposed Textbook and Educational Materials Policy

Peter Linzer
Professor of Law,
Faculty Senator
and Member of the Faculty Affairs Committee

I dissent from Parts D, E and F of the report of the Faculty Affairs Committee, proposing a "Textbook and Educational Materials Policy" for the University. Apparently, this proposal began as a reaction to reports of teachers charging a fee to students for preparing class materials, and to the extent that Parts C and D of the Policy cover unpublished or privately published materials, and implicitly, though not very clearly, forbid charging a "royalty" for privately prepared class materials, I fully support them. Part D, however, is clearly intended to cover royalties paid to an author by the publisher of a nationally used textbook or casebook. As such, it demeans the University, insults the author-instructor, cheats him or her out of legitimate earnings and quite possibly violates the law.

Whatever the motives of its sponsors, this proposal makes the University look minor league. At major research universities it is the norm for professors to publish course books, and for them to teach out of their own materials. Those who are talented enough to write a book that is nationally published for use in university courses are regarded as worthy of praise, and it is assumed that their students benefit from instruction from the author or co-author of the book used in the course. That this phenomenon is viewed with suspicion at UH reinforces the Cougar High mentality and reputation that many of us have been laboring for decades to erase, and that hurts the University in rating systems like that of U.S. News..

To assume that the instructor who uses his own casebook does so

to extort royalties from his students demeans the University and insults the instructor. Most course books take years to write, and authors are entitled under the copyright laws to be compensated for their efforts. The Policy does not save the students any money; it just extorts a kick-back to the University or to some "charity listed on the State charitable campaign." I have been informed by a noted and very reliable tax authority that the coerced donation would probably not be deductible under the federal income tax laws, and thus, that the instructor would have to pay taxes on the money that he or she was forced to "donate" away. Even more serious, there is a strong possibility that a forced "donation" to the University would violate federal and state white collar crime laws. An employer (the University) forcing an employee to give to it royalties that lawfully belong to the employee is structurally similar to payola to radio stations, which is a federal felony. Even the forced giving to an "approved" charity sounds a lot like the boss telling an employee that he has to give to the boss's favorite charity. The University, as a state agency, would also be open to suit arguing that the forced "donation" is a taking without just compensation, violating the Fifth Amendment to the Constitution.

The argument that there is an appearance of impropriety is belied by the hundreds if not thousands of institutions of higher learning that not only permit but encourage their instructors to publish course books without having to "donate" the royalties from their own classes. Many teachers may choose to give a party with the proceeds or to donate them to some cause, but they should not be forced to do so. That, to my mind, violates academic freedom and is particularly offensive from a university that is always apologizing for not paying its professors better.

This is ill thought out. There was an exception for nationally published course books in the original proposal, but apparently that was abandoned because of pressure from the Provost. If the Faculty Senate stands for anything, it should stick with the original proposal. If that proposal is forced down the faculty's throat, at least it will be clear that the faculty did not acquiesce. The matter can then be submitted to the courts, perhaps in a class action on behalf of all present and future faculty authors who may wish to use the product of their hard work in class without having to forfeit the royalties to the University or a favorite charity of the state. The University should not be able to say that this body, supposedly representing the University Faculty, agreed to the proposal.

Lawrence R. Williams, Ph. D.

Director of Undergraduate Affairs & Academic Advising
Department of Biology and Biochemistry
University of Houston
Houston, TX 77204-5501
(713) 743-2626, Irwilliams@uh.edu