2 March 1993

Dear Jane,

I wonder if we could talk about this briefly before tomorrow's faculty meeting.

You've seen the Conflict of Interest DTF's proposed policy. You may not have seen the attached letter from the AAUP, which appeared in mailboxes yesterday. On some points, I think the AAUP position is just untenable; for instance, previous rulings from the AG's office make it clear that there's a conflict of interest in making a profit by selling your own material to your students, and we tried to write a policy that allows us to use our materials if we simply don't profit by them. But the first issue, that of using college property for ventures that may result in personal profit, is very problematic. I realized this while working with the DTF, but I don't think there's anything to be done about it legally. That is, we all use our computers and other college equipment for a seamless array of teaching and research (scholarly, scientific, eductional) activities, some of which may result in things we can sell for personal profit. All academics do this. For 20 years at Evergreen, I've worked on better ways of understanding and teaching biology, using college time and equipment, and a lot of that work found its way into my 1983 biology textbook and now is going into the new book that we're about to publish. (We've just signed a new contract!) I think the AAUP position is that the policy has to be written to allow us to do this explicitly. I believe, however, that the the AG would never approve of the College adopting a formal policy that permits this because at some point (some point that is almost impossible to define) there would be a technical violation of the law. (Sure, we could try; but the DTF had the unpleasant experience a couple of times of writing policy statements that the AAG would not approve.)

However, I think any reasonable person, considering academic traditions, would consider the violation of conflict of interest in this situation to be minimal--*de minimus*, as Jose Gomez puts it in legal language. I suggest, therefore, that this policy can be sold to the faculty if you would be willing to write a Memorandum of Understanding to the faculty acknowledging the situation and saying that even if there is some minimal technical violation of conflict of interest in such scholarly activities, the College will not consider it a violation and will not pursue any conflict of interest case against a faculty member for engaging in such activities. I could see, incidentally, that there might be some need for faculty members to have an understanding with the College regarding copyright, but that is another matter entirely.

I can see us having a rather noisy faculty meeting tomorrow. I'm trying to find a way to head off the issues. If you have a better idea, I'd be pleased to talk to you about it.

Best wishes,

Burt Guttman