

The Faculty Advocate

NEWSLETTER OF THE UMKC CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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Colleagues,

This edition of the Advocate reflects the decision of the executive committee to create shorter versions of the newsletter with greater frequency than in the recent past. Each edition will center on an important issue or pressing concern. In this edition, you will read about the attacks on academic freedom that occurred last spring in a class co-taught by Judy Ancel, and about the current bill proposed to the Missouri legislature that would make recordings of lectures into the property of students. If you have ideas for articles you would like to see in the Advocate, or would like to contribute a short piece, please contact me at bakerks@umkc.edu.

Collegially yours,
Scott Baker

Classroom Recordings and Academic Freedom by Scott Baker

For those of you who do not know Judy Ancel, she is the director of the Institute for Labor Studies which is housed in the Economics department at UMKC. In the spring of 2011, she was co-teaching a class called “Labor, Politics & Society” with a colleague at UMSL, Don Giljum. On the Blackboard site for the class, they made videotaped recordings of the lectures available to students for review, and for students who missed a class. As a resource for course participants, these recordings were accessible only to registered students. They were not public domain.

On April 25th, however, segments of these recordings appeared on a website administered by Andrew Breitbart and Dana Loesch, called BigGovernment.com. The segments had been edited to misrepresent the actual content of the lectures, so that Ancel and Giljum appeared to promote violence as a labor tactic. In fact, the class discussions of the topic were open debates in which the instructors neither advocated a particular position nor precluded students

from expressing an opinion. However, “At no time did my co-instructor, Don Giljum, nor I advocate violence,” Ancel wrote in a statement at the time. The “incriminating” segments actually showed them paraphrasing or quoting other people’s opinion during the class discussion.

Discussions of labor are highly politicized, of course, a fact reinforced in the responses to Breitbart’s publication of the distorted video segments. Lt. Governor Peter Kinder immediately used the opportunity to push for anti-union legislation. Less expected was the response of the universities involved. At UMKC, a short period of silence and investigation was followed by a strong response by Provost Hackett and the administration in support of the course, the instructors, and especially the students. At UMSL, Giljum was given an ultimatum to resign without the investigation and wasn’t even reinstated when the videos were proven to be fraudulent—only pressure from UMSL faculty and students, and from organizations of labor educators, of adjuncts, and the AAUP culminated in his reappointment.

The video recordings were copied and delivered to Breitbart and Co. by a student from Washington University who was active in the Tea Party cause and took only this class at UMSL. He later proudly admitted his role. Unfortunately, the legal perspectives here are gray. While the manipulation of the video material is libelous, proving who did the actual editing can be difficult. It is illegal for students to distribute recorded lectures to others not in the class, but in enforcement terms, this is probably equivalent to file sharing.

There are many other issues here, and the instructors and administrators were correct to point out how fundamentally destructive of student privacy rights these attacks were. They also significantly cripple student participation in the classroom. If students are forced to consider how their comments during discussions might come across if their statements are published out of context and without their consent, then the difficult task of encouraging active student participation will become next to impossible—and the

House Bill No. 1229

by Scott Baker

more politicized and controversial the topic, the more reserved the students will be. All students in classes being recorded—including audio recordings as well—ought to have serious reservations about access to those recordings.

But as this is an AAUP newsletter, I want to focus mostly on the relevance of the case on the three central tenets of the organization: academic freedom, tenure, and faculty governance.

As faculty it is our job to make original scholarly contributions to our disciplines that further knowledge and inquiry. This basic mandate consistently leads us into topics that the broader public finds esoteric at least, and often controversial or provocative. Teaching is one of the contact points with a population that ought to, and often wants to, be exposed to such controversies. This case clearly raises questions about recording lectures and making them available on the web, even when they are reserved for Blackboard users or some other password protected distribution. Although we now have statements in support of teachers and students who are faced with misuse of their recorded lectures, there is still no consequence for perpetrators of misappropriated and manipulated recordings—neither the student nor Breitbart and Co. faced any criminal charges, nor are future charges likely.

Both Ancel and Giljum are non-tenure track lecturers, and we are all aware that such adjunct faculty now make up the majority of college and university professors; this is true at both UMKC and UMSL. There is no doubt that the response of the administrations would have been different had this class been taught by tenured faculty, but it is at least reassuring that UMKC's administration came out in support of Ancel, her course and her students. But just like the students who now may hesitate to participate in class discussions that are being recorded, it would only be sensible if adjunct faculty became wary of allowing classroom recordings.

This, of course, is where faculty governance comes in. In the fall the Faculty Senate of UMKC, and presumably of each of the UM campuses, reviewed CRR 200.015, which addresses students' responsibility regarding classroom recordings. At the beginning of the current semester, the Provost also circulated a model text to be included on any course syllabus that expressly limits or forbids the use of classroom recordings, at the discretion of the instructor. Faculty should be discussing whether these two documents best protect faculty rights and student privacy, or how they can be amended or restructured to better ensure that academic freedom remains a standard for everyone in every classroom.

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In January, in an apparent response to the events of last spring, State Representative Paul Curtman introduced the following bill to amend chapter 174 of the state constitution:

“Any student of an institution of higher education located in this state and funded in whole or in part by appropriations from state revenue shall have the right to record public lectures that are presented in a classroom environment for such student's individual use. This section shall not be interpreted to permit the dissemination of recordings in consideration for compensation and shall not waive or infringe any institutional policy protecting or affirming copyright, trademark, or intellectual property interests otherwise eligible for protection under state or federal law.”

The second sentence is clearly intended to assuage concerns that recordings could be misappropriated and distributed in ways similar to what occurred last spring. However, this bill intentionally overlooks two important lessons from that abuse of videotaped lectures: We had a policy against such misuse and it did not dissuade the perpetrators from broadcasting fraudulent, manipulated segments of the recordings, nor have meaningful punishments for such activities been enacted. It also ignores the reservations all faculty and students must now entertain about participating in class given the potential for recordings to show up on the web. We should remember that not all such online postings will be high profile, attention-grabbing stunts, but that any YouTube upload potentially has the same privacy-shattering impact for students and instructors.

Perhaps more indicative of Curtman's motives for proposing this legislation is the statement on his website from January 4. “This bill will protect student rights to record lectures or class proceedings in institutions of higher learning that in some manner receive public money so long as the student does not attempt to financially profit from such recordings.” (<http://paulcurtman.weebly.com/2/post/2012/01/beginning-the-2012-session.html>) Here the language of intellectual property rights of professors has been replaced with the rights of tuition-paying students at public universities to own the content of class materials that they and the taxpayers have paid for. Republishing the material is not addressed here; the only crime is selling the recording for profit. Faculty especially should be very concerned when intellectual property rights and all classroom interactions are considered sold on the basis of tuition payments.